

**STATE OF WASHINGTON  
CLARK COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CLARK COUNTY, WASHINGTON; and  
BONNEVILLE CONSERVATION,  
RESTORATION, AND RENEWAL  
TRUST, LLC,

Defendants.

NO.

**PROSPECTIVE PURCHASER  
CONSENT DECREE**

RE: CAMP BONNEVILLE MILITARY  
RESERVATION

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## I. INTRODUCTION

1. This prospective purchaser consent decree (Decree) is made and entered into by and between the Washington State Department of Ecology (Ecology), Clark County, Washington (Clark County), and the Bonneville Conservation, Restoration, and Renewal Trust LLC (BCRRT LLC). The mutual objectives of Ecology, Clark County, and the BCRRT LLC are to provide for remedial actions at a facility where there have been releases or threatened releases of hazardous substances and to resolve the potential liability of Clark County and the BCRRT LLC for remedial actions within the facility. This Decree requires Clark County and the BCRRT LLC to remediate the Camp Bonneville Military Reservation as defined in this Decree. The remedial actions are described in Section X of this Decree and in the attached Exhibits.

2. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

3. In signing this Decree, Ecology, Clark County, and the BCRRT LLC agree to its entry and agree to be bound by its terms as provided herein.

4. By entering into this Decree, the Parties do not intend to discharge non-settling Parties from any liability they have with respect to the matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree, and Ecology retains the right to initiate enforcement action against any liable person not a Party to this Decree.

5. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that Clark County and the BCRRT LLC shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

1           6.       The Court is fully advised of the reasons for entry of this Decree, and good cause  
2 having been shown, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

3                               **II.       AUTHORITY, JURISDICTION, AND VENUE**

4           7.       This Court has jurisdiction over the subject matter and over the Parties pursuant  
5 to chapter 70.105D RCW, the Model Toxics Control Act (MTCA), and pursuant to chapter  
6 70.105 RCW, the Hazardous Waste Management Act (HWMA). Venue is proper in Clark  
7 County pursuant to RCW 70.105D.050(5)(b) and RCW 4.12.025.

8           8.       Pursuant to RCW 70.105.120, the Washington State Attorney General, at the  
9 request of Ecology, has authority to bring actions to enforce any requirement in the HWMA.

10          9.       Pursuant to RCW 70.105D.040(5), the Washington State Attorney General has  
11 the authority to agree to a settlement with a person not currently liable for remedial action at a  
12 facility who proposes to purchase, redevelop, or reuse the facility, provided Ecology determines,  
13 after public notice and comment, that:

14           (A)     The settlement will yield substantial new resources to facilitate cleanup;

15           (B)     The settlement will expedite remedial action consistent with the rules adopted  
16 under MTCA; and

17           (C)     Based on available information, the redevelopment or reuse of the facility is not  
18 likely to contribute to any existing release or threatened release at the Site, interfere with any  
19 remedial actions that may be needed at the Site, or increase health risks to persons at or in the  
20 vicinity of the Site.

21          10.      Pursuant to RCW 70.105D.040(4)(b), such a settlement shall be entered as a  
22 consent decree issued by a court of competent jurisdiction.

23                               **III.       PARTIES BOUND**

24          11.      This Decree shall apply to and be binding upon the signatories to this Decree  
25 (Parties). The undersigned representative of each Party hereby certifies that he or she is fully  
26 authorized to enter into this Decree and to execute and legally bind such Party to comply with the

1 Decree. Clark County and the BCRRT LLC each agree to undertake the actions required of  
2 them by the terms and conditions of this Decree and not to contest state jurisdiction regarding  
3 this Decree. Clark County and the BCRRT LLC shall provide a copy of this Decree to all  
4 agents, contractors, and subcontractors retained to perform work required by this Decree and  
5 shall ensure that all work undertaken by such contractors and subcontractors will be in  
6 compliance with the Decree.

#### 7 IV. DEFINITIONS

8 12. Unless otherwise expressly provided herein, the definitions set forth in chapter  
9 70.105D RCW and chapter 173-340 WAC shall control the meanings of the terms used in this  
10 Decree. Whenever the terms listed below are used in this Decree or in the attachments hereto,  
11 the following definitions shall apply:

12 (A) “Decree” means this Prospective Purchaser Consent Decree and each of the  
13 exhibits attached to this Decree. All exhibits are integral and enforceable parts of this Decree. In  
14 the event of conflict between this Decree and any exhibit attached to this Decree, this Decree  
15 shall control.

16 (B) “Section” means a portion of this Decree identified by a Roman numeral and  
17 including one or more Paragraphs.

18 (C) “Paragraph” means a portion of this Decree identified by an Arabic Numeral.

19 (D) “Parties” means the Washington State Department of Ecology (Ecology), Clark  
20 County, Washington (Clark County), and the Bonneville Conservation, Restoration, and  
21 Renewal Trust LLC (BCRRT LLC).

22 (E) “Bonneville Conservation, Restoration, and Renewal Trust LLC” or “BCRRT  
23 LLC” means the conservation non-profit that will hold the Property and undertake the remedial  
24 actions required of it under this Decree.

25 (F) “Site” means all potentially contaminated areas where hazardous substances  
26 originating from within the Property boundary may have come to be located. The Site is a

1 “facility” as defined at RCW 70.105D.020(4). The Site is herein referred to as the Camp  
2 Bonneville Site.

3 (G) “Property” means the Camp Bonneville Military Reservation (CBMR), which is  
4 located in Clark County, Washington, approximately twelve (12) miles northeast of the center of  
5 the City of Vancouver. The terms “Property,” “Camp Bonneville Military Reservation,” and  
6 “CBMR” all refer to the property that is the subject of this Decree. The Property lies along both  
7 banks of Lacamas Creek, a tributary of the Columbia River, and occupies approximately 3,840  
8 acres. The Property is further described in Exhibit G, attached hereto, and incorporated by  
9 reference. The location of the Property is also illustrated in Exhibit A, attached hereto. Prior to  
10 the entry of this Decree and completion of the early transfer process described in Section VI.A of  
11 this Decree, the Army owned 3,020 acres of the Property and leased the remaining 820 acres of  
12 the Property from the Washington State Department of Natural Resources (DNR). The Property  
13 includes the entire 3,840 acres. The Property consists of the “Early Transfer Parcel” and the  
14 “DNR Parcels,” as defined in this Section of the Decree.

15 (H) “Early Transfer Parcel” means the approximately 3,020-acre parcel of the  
16 Property being transferred to Clark County by the Army under the process described in Section  
17 VI.A of this Decree. A legal description and an illustration of the parcel are provided  
18 respectively in Exhibits G and A, attached hereto.

19 (I) “DNR Parcels” means the two parcels of the Property, totaling approximately 820  
20 acres, that are owned by DNR and leased to the Army at the time of entry of this Decree. The  
21 two parcels are adjacent to the Early Transfer Parcel and respectively located northeast and south  
22 of the Early Transfer Parcel. A legal description and an illustration of the two parcels are  
23 provided respectively in Exhibits G and A, attached hereto.

24 (J) “Central Impact Target Area” or “CITA” means the approximately 465-acre  
25 fenced portion of the Property identified and illustrated in Exhibit A. The CITA served as the  
26

1 target area for several of the firing ranges at the CBMR, including the 105 and 155 millimeter  
2 artillery ranges.

3 (K) “Cleanup Obligations” mean the obligations of the BCRRT LLC under this  
4 Decree to develop and conduct the remedial actions that are necessary to complete the  
5 investigation and cleanup of the Property. These obligations are more specifically described in  
6 Section X.C of this Decree.

7 (L) “Long-Term Obligations” mean the ongoing obligations under this Decree to  
8 maintain engineered and institutional controls, monitor and report conditions, and otherwise  
9 ensure the long-term effectiveness of the cleanup of the Property completed by the BCRRT LLC  
10 under Section X.C of this Decree. These obligations are more specifically described in Section  
11 X.D of this Decree. Until the BCRRT LLC conveys the Early Transfer Parcel back to Clark  
12 County, these obligations shall be the responsibility of the BCRRT LLC. After the BCRRT LLC  
13 conveys the Early Transfer Parcel back to Clark County, these obligations shall be the  
14 responsibility of Clark County. Neither the BCRRT LLC nor Clark County shall be required to  
15 undertake any Long-Term Obligations on any portion of the Property that they do not own.

16 (M) “Dangerous wastes” means any dangerous waste as defined at RCW  
17 70.105.010(5) and any dangerous waste designated by rule pursuant to chapter 70.105 RCW,  
18 including, as defined in WAC 173-303-040, any solid waste designated in WAC 173-303-070  
19 through 173-303-100 as dangerous waste, extremely hazardous waste, or mixed waste.  
20 Dangerous wastes are “hazardous substances” under RCW 70.105D.020(7)(a).

21 (N) “Dangerous constituents” means, as defined in WAC 173-303-040 and  
22 173-303-646(1)(d), any constituent identified in WAC 173-303-9905 or 40 C.F.R. Part 264  
23 Appendix IX; any constituent that caused a solid waste to be listed as a dangerous waste or to  
24 exhibit a dangerous characteristic under chapter 173-303 WAC or to meet a dangerous waste  
25 criteria under chapter 173-303 WAC; and any constituent defined as a hazardous substance  
26 under RCW 70.105D.020(7).

1 (O) “Solid waste” means, as defined at WAC 173-303-016(3), any discarded material  
2 that is not excluded by WAC 173-303-017(2) or that is not excluded by variance granted under  
3 WAC 173-303-017(5), and includes military munitions identified as a solid waste at WAC  
4 173-303-578(2).

5 (P) “Military munitions” means, as defined in WAC 173-303-040, all ammunition  
6 products and components produced or used by or for the U.S. Department of Defense or the U.S.  
7 Armed Services for national defense or security, including military munitions under the control  
8 of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy, and  
9 National Guard personnel. As further defined in WAC 173-303-040, the term “military  
10 munitions” includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics,  
11 chemical and riot control agents, smokes and incendiaries used by Department of Defense  
12 components, including bulk explosives and chemical warfare agents, chemical munitions,  
13 rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition,  
14 small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and  
15 dispensers, demolition charges, and devices and components thereof. For the purposes of this  
16 Decree, the term “military munitions” also means all ammunition products and components  
17 produced or used with the permission of the U.S. Department of Defense or the U.S. Armed  
18 Services for national defense or security.

19 (Q) “Munitions and Explosives of Concern” or “MEC” distinguishes specific  
20 categories of military munitions that may pose unique explosives safety risks and means (1)  
21 Unexploded ordnance (UXO), as defined in 10 U.S.C. § 101(e)(5)(A) through (C), WAC  
22 173-303-040, and this Decree; (2) Discarded military munitions (DMM), as defined in 10 U.S.C.  
23 § 2710(e)(2); or (3) Munitions constituents (MC) (e.g., TNT, RDX), as defined in 10 U.S.C.  
24 § 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

25 (R) “Unexploded ordnance” or “UXO” means, as defined in WAC 173-303-040,  
26 military munitions that have been primed, fused, armed, or otherwise prepared for action; have



1 been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to  
2 operations, installations, personnel, or material; and remain unexploded either by malfunction,  
3 design, or any other cause.

4 (S) “Anomalies Selection Board” or “ASB” means the Board that reviews data  
5 regarding surface and subsurface anomalies and makes decisions regarding the further  
6 investigation and remediation of those anomalies based on that data. The members of the ASB  
7 shall be selected by the mutual agreement of the project coordinators. If the project coordinators  
8 are unable to agree on the membership of the ASB or if the ASB is unable to reach mutual  
9 agreement on the further investigation or remediation of anomalies, then Ecology’s project  
10 coordinator will issue a written decision. Clark County and/or the BCRRT LLC may request  
11 review of any decision by Ecology’s project coordinator in accordance with the dispute  
12 resolution process set forth in Section XVI of this Decree.

13 (T) “Step-out clearance” means that if an item of MEC or a pattern of similar forensic  
14 evidence of a particular type of military munitions is found within a boundary grid of a  
15 designated clearance area, then the clearance area shall be expanded (stepped-out) by adding new  
16 grid(s) adjacent to the grid of concern and the new grid(s) shall be cleared. If a new grid extends  
17 beyond the Property perimeter fence line, then that grid shall only be cleared up to, but not  
18 beyond, that fence line and Ecology and the Army shall be notified. This adaptive management  
19 process shall continue as long as MEC or forensic evidence of a particular type of military  
20 munitions continues to be found in a boundary grid.

## 21 V. STATEMENT OF FACTS

22 13. Ecology makes the following factual findings without any express or implied  
23 admission by Clark County or the BCRRT LLC.

24 14. The Camp Bonneville Military Reservation (CBMR or the Property), is located in  
25 Clark County, Washington, approximately twelve (12) miles northeast of the center of the City  
26

1 of Vancouver. The Property lies along both banks of Lacamas Creek, a tributary of the  
2 Columbia River, and occupies approximately 3,840 acres.

3 15. Prior to the entry of this Decree and the completion of the early transfer process  
4 described in Section VI.A of this Decree, the Army owned 3,020 acres of the Property and leased  
5 the remaining 820 acres from the Washington State Department of Natural Resources (DNR).  
6 Through the early transfer process described in Section VI.A of this Decree, Clark County is  
7 acquiring ownership of the Early Transfer Parcel from the Army. Upon acquisition of that  
8 parcel, Clark County will immediately (within 24 hours) convey ownership of it by quitclaim  
9 deed to the BCRRT LLC for the purpose of meeting its Cleanup Obligations on the Property  
10 under this Decree. The DNR Parcels continue to be owned by DNR and leased to the Army.

11 16. The United States War Department and its successor agency, the Department of  
12 Defense, has owned and operated the Camp Bonneville Military Reservation for military training  
13 since 1909. Units of the Army, Army Reserve, Marine Corps Reserve, Navy Reserve, Coast  
14 Guard Reserve, and National Guard have trained on the CBMR. The CBMR has also been used  
15 by Federal, State, and local law enforcement agencies for small arms training. A small arms  
16 range on the CBMR is currently operated by the Federal Bureau of Investigation. The CBMR  
17 was placed on the Base Realignment and Closure (BRAC) list and closed in 1995. Prior to the  
18 entry of this Decree and the completion of the early transfer process described in Section VI.A of  
19 this Decree, the CBMR was under the control and authority of the garrison commander of Fort  
20 Lewis. The garrison commander continues to retain control over the portion of the CBMR  
21 owned by DNR and leased to the Army.

22 17. Between 1909 and 1995, unused military munitions, both live and practice, were  
23 stored at the Camp Bonneville Military Reservation. These unused military munitions included  
24 artillery ammunition, mortar ammunition, air-launched rockets, shoulder-fired rockets, guided  
25 missiles, bombs, land mines (practice only), grenades, fuses, and small arms ammunition. Some  
26

1 of these military munitions were disposed of at the CBMR by open burning or open detonation  
2 (OB/OD).

3 18. Between 1909 and 1995, military munitions, both live and practice, were used at  
4 the Camp Bonneville Military Reservation. These used military munitions included artillery  
5 ammunition, mortar ammunition, shoulder-fired rockets, land mines (practice only), grenades,  
6 and small arms ammunition. These military munitions were primed, fused, armed, or otherwise  
7 prepared for action, and then fired, launched, or projected from, or placed at or on, the Camp  
8 Bonneville Military Reservation.

9 (A) Some of the military munitions used at the CBMR exploded, fragmenting the  
10 munitions.

11 (B) Some of the military munitions used at the CBMR did not explode, either by  
12 malfunction, design, or some other cause. These munitions are referred to as “unexploded  
13 ordnance” or “UXO”.

14 19. At least eight firing ranges at the Camp Bonneville Military Reservation had  
15 safety fans that extended beyond the boundary of the CBMR. Between 1909 and 1995, military  
16 munitions were used at those firing ranges. Some of the military munitions used at those firing  
17 ranges, including 105 and 155 millimeter artillery and 4.2 mortar projectiles, had ranges that  
18 extended beyond the boundary of the CBMR. Based on these findings of fact, there is a  
19 possibility that military munitions may have landed off-range, beyond the boundary of the  
20 CBMR. These used military munitions may include both unexploded ordnance (UXO) and the  
21 fragments and constituents of exploded munitions.

22 20. Between 1909 and 1995, some of the used military munitions at the Camp  
23 Bonneville Military Reservation, including both unexploded ordnance (UXO) and munitions  
24 fragments, were recovered and collected, and then disposed of at the CBMR by open burning or  
25 open detonation (OB/OD).

1           21.     Several areas throughout the Camp Bonneville Military Reservation were used  
2 for the disposal of military munitions. At least three areas of the CBMR were used for the  
3 disposal of military munitions by open burning or open detonation (OB/OD).

4           22.     At the time the Camp Bonneville Military Reservation was closed in 1995, some  
5 of the military munitions used during military activities, including both unexploded ordnance  
6 (UXO) and the fragments and constituents of exploded munitions, were left in place at the  
7 CBMR and may have been left in place or migrated beyond the boundary of the CBMR.

8           23.     Between 1909 and 1995, diesel fuel, fuel oil, pesticides, solvents, lead and  
9 chromium-containing paint, and other hazardous materials were also used at the Camp  
10 Bonneville Military Reservation.

11          24.     Investigations since 1995 by the Army and its contractors at the Camp Bonneville  
12 Site have shown that these historical military and maintenance operations have resulted in the  
13 presence of the following substances at the Site:

14           (A)     The presence of diesel fuel, fuel oil, pesticides, and xylenes in the soil;

15           (B)     The presence of volatile organic compounds, including 1,1,1-trichloroethane, in  
16 the soil and ground water;

17           (C)     The presence of military munitions used or disposed of at the Site, including  
18 explosives, unexploded ordnance (UXO), munitions, and munitions fragments, in the soil;

19           (D)     The presence of the constituents of those military munitions, including  
20 perchlorate and the explosive compounds RDX and HMX, in the soil and ground water.

21          25.     Military munitions have been found in several areas throughout the Camp  
22 Bonneville Military Reservation. Because of the historical military and maintenance operations  
23 described above, including the storage, use, and disposal of military munitions, the presence of  
24 additional military munitions is strongly suspected. Because forests were located within several  
25 of the firing ranges when they were active, Ecology also has reason to believe that some of the  
26

1 military munitions used at those ranges are embedded in the trees located within those firing  
2 ranges.

3 26. People live adjacent to the Camp Bonneville Military Reservation and rely on  
4 ground water as a source of drinking water. The CBMR is also inhabited by numerous species of  
5 wildlife and borders both sides of Lacamas Creek, which is a tributary of the Columbia River.

6 27. The foregoing information is contained in the following documents:

7 (A) Hart Crowser, Inc., *Petroleum Contaminated Soil Investigation, Former Tank No.*  
8 *7-CMBPN, Building No. 4475, Camp Bonneville, Vancouver, Washington,*  
Contact No. DACA67-93-D-1004, Delivery Order No. 53, September 11, 1996.

9 (B) Woodward-Clyde Federal Services, *Final Environmental Baseline Survey Report,*  
10 *Camp Bonneville, Washington,* Contract No. DACA67-95-D-1001, January 30,  
1997.

11 (C) Hart Crowser, Inc., *Final Lead-Based Paints and Soil-Metals Survey Report,*  
12 *Camp Bonneville, Washington,* Contract No. DACA67-93-D-1004, Delivery  
Order No. 49, February 28, 1997.

13 (D) Hart Crowser, Inc., *Pre-Demolition Survey, CS Gas Chamber Building, Camp*  
14 *Bonneville, Vancouver, Washington,* Contract No. DACA67-93-D-1004,  
Delivery Order No. 52, February 28, 1997.

15 (E) U.S. Army Corps of Engineers, *U.S. Department of Defense Program Base*  
16 *Realignment and Closure Ordnance, Ammunition and Explosives Final Archives*  
17 *Search Report – Report Plates, Camp Bonneville, Clark County, Washington,*  
July 1997.

18 (F) U.S. Army Corps of Engineers, *U.S. Department of Defense Program Base*  
19 *Realignment and Closure Ordnance, Ammunition and Explosives Final Archives*  
*Search Report – Conclusions and Recommendations, Camp Bonneville, Clark*  
County, Washington, July 1997.

20 (G) U.S. Army Corps of Engineers, *U.S. Department of Defense Program Base*  
21 *Realignment and Closure Ordnance, Ammunition and Explosives Final Archives*  
22 *Search Report – References, Camp Bonneville, Clark County, Washington,* July  
1997.

23 (H) Prezant Associates, Inc., *Final Asbestos Surveys Report, Camp Bonneville,*  
24 *Vancouver, Washington, Volumes I-III,* Contract No. DACA67-95-D-1018,  
Delivery Order No. 4, November 7, 1997.

25 (I) Cecon Corporation, *Drain Line and PCS Removal, Final Report, Camp*  
26 *Bonneville, Vancouver, Washington,* Contract No. DACA67-96-M-0890,  
December 1997.

- (J) UXB International, Inc., *Removal Report Ordnance and Explosive (OE) Sampling, Camp Bonneville, Vancouver, Washington*, Contract No. DACA87-97-D-006, Delivery Order No. 10, August 31, 1998.
- (K) Shannon & Wilson, Inc., *Final Multi-Sites Investigation Report, Camp Bonneville, Vancouver, Washington, Volumes 1-5*, Contact No. DACA67-94-D-1014, Delivery Order Numbers 10 and 17, July 1999.
- (L) URS Greiner Woodward Clyde, *Final Supplemental Archive Search Report, Camp Bonneville, Vancouver, Washington*, Contract No. DACA67-98-D-1005, Delivery Order No. 3, August 15, 1999.
- (M) Shannon & Wilson, Inc., *Final Landfill 4 Investigation Report, Camp Bonneville, Washington*, Contract No. DACA67-94-D-1014, August 1999.
- (N) Gary Struthers Associates, Inc., *Final Closure Report, Environmental Restoration, Multi-Sites, Camp Bonneville, Washington*, Contract No. DACA67-95-G-0001, Task Order 58, February 2001.
- (O) Hart Crowser, Inc., *Final Project Completion Report, Surface Water Investigation of Lacamas Creek and Tributaries, Camp Bonneville, Vancouver, Washington*, Contact No. DACA67-98-D-1008, Delivery Order No. 20, March 10, 2000.
- (P) U.S. Army Corps of Engineers, *Final GIS-Based Historical Time Sequence Analysis, Camp Bonneville, Washington*, August 2000.
- (Q) URS Greiner Woodward Clyde, *BRAC HTRW Site Closure Report for Landfills 1, 2, and 3; Former Burn Area; Buildings 1962 and 1963; Grease Pits at the Camp Bonneville and Camp Killpack Cantonments; Former Sewage Pond; and Hazardous Materials Accumulation Point, Camp Bonneville, Washington*, Contract No. DACA67-98-D-1005, Delivery Order No. 43, September 2000.
- (R) UXB International, Inc., *Final Removal Report, Ordnance and Explosive Removal Action, Camp Bonneville, Vancouver, Washington*, Contract No. DACA87-97-D-006, Delivery Order No. 13, October 12, 2000.
- (S) Parsons Engineering Science, Inc., *Final Reconnaissance Work Plan, Additional Site Characterization, Camp Bonneville, Vancouver, Washington*, October 2001.
- (T) Gary Struthers Associates, Inc., *Final Closure Report, Environmental Restoration, Pesticide Building #4126 and Ammunition Bunkers #2953, #2951 and #2950, Camp Bonneville, Washington*, Contract No. DACA67- 95-G-0001 T.O.58, December 2001.
- (U) Parsons Environmental, *Draft Reconnaissance Results, Small Arms Ranges, Camp Bonneville, Vancouver, WA*, Contract No. DACA87-95-D-0018, January 2002.

- (V) Gary Struthers Associates, Inc., *Final Closure Report, Environmental Restoration, Drum Burial Area, Camp Bonneville, Washington*, Contract No. DACA67-95-G-0001 T.O. 58, April 2002.
- (W) Project Performance Corporation, *Final Field Work Report – Investigation and Monitoring of Site-Wide Ground Water and Ground Water Investigations for Remedial Action Unit 2B*, April 2003.
- (X) URS Corp., *Final Report, Landfill Area 4 / Demolition Area 1 Expanded Site Inspection, Camp Bonneville, Washington*, Contract No. DACA67-98-D-1005, Delivery Order 0054, May 2003.
- (Y) Parsons Infrastructure & Technology Group, Inc., *Final Reconnaissance Summary Report, Camp Bonneville, Vancouver, Washington*, Contract No. DACA87-00-D-0038, Delivery Order 0017, May 2003.
- (Z) Atlanta Environmental Management, Inc., *Final Site Investigation Report, Small Arms Ranges and Demolition Areas 2 and 3, Camp Bonneville, Vancouver, Washington*, Contract No. DACA65-03-F-0002, September 2003.
- (AA) Project Performance Corporation, *Draft Remedial Investigation Report for Remedial Action Unit 2B, Camp Bonneville, Vancouver, Washington*, GSA Contract No. GS-10F-0028J, September 2003.
- (BB) Project Performance Corporation, *Draft Remedial Investigation / Feasibility Study Report for Small Arms Ranges, Camp Bonneville, Vancouver, Washington*, GSA Contract No. GS-10F-0028J, October 2003.
- (CC) PBS Engineering and Environmental, *Final Ground Water Sampling and Analysis Report, 4<sup>th</sup> Quarter 2003, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0115, May 2004.
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- (EE) URS Corp., *Final Cleanup Action Plan for Remedial Action Unit 1, Camp Bonneville, Vancouver, Washington*, Contract No. DACA67-02-D-2003, July 2004.
- (FF) Parsons, *Draft Remedial Investigation / Feasibility Study Report for Remedial Action Unit 3, Camp Bonneville, Vancouver, Washington*, GSA Contract No. DACA87-00-D-0038, November 2004.
- (GG) PBS Engineering and Environmental, *Final Ground Water Sampling and Analysis Report, 2nd Quarter 2004, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0115, January 2005.
- (HH) PBS Engineering and Environmental, *Final Ground Water Sampling and Analysis Report, 3rd Quarter 2004, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0115, January 2005.

- (II) Calibre, Draft Final *Remedial Investigation / Feasibility Study Report for Small Arms Ranges, Camp Bonneville, Vancouver, Washington*, GSA Contract No. GS-10F-0028J, March 2005.
- (JJ) Calibre, Draft Final *Work Plan for Interim Actions at Small Arms Range Berms and Fire Support Areas, Camp Bonneville, Vancouver, Washington*, GSA Contract No. FS-10F-0028J, March 2005.
- (KK) Calibre, Final *Site Investigation Report for Demolition Areas 2 and 3, Camp Bonneville, Vancouver, Washington*, GSA Contract No. GS-10F-0028J, March 2005.
- (LL) Calibre, Draft Final Groundwater Data Evaluation Report, *Camp Bonneville, Vancouver, Washington*, GSA Contract No. GS-10F-0028J, April 2005.
- (MM) PBS Engineering and Environmental, *Final Ground Water Sampling and Analysis Report, 4th Quarter 2004, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0115, July 2005.
- (NN) PBS Engineering and Environmental, *Final Ground Water Sampling and Analysis Report, 1st Quarter 2005, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0115, July 2005.
- (OO) PBS Engineering and Environmental, *Draft Ground Water Sampling and Analysis Report, 2nd Quarter 2005, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0115, August 2005.
- (PP) PBS Engineering and Environmental, *Draft Ground Water Sampling and Analysis Report, 3rd Quarter 2005, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0115, November 2005.
- (QQ) Tetra Tech, Inc, *Final Interim Removal Action Report, Landfill 4/Demolition Area 1, Camp Bonneville, Vancouver, Washington*, Contract No. DAAD11-03-F-0102, November 2005.

28. This and any additional information regarding the Camp Bonneville Site may be found in the Ecology site file.

## **VI. PROPERTY TRANSFERS FOR CLEANUP AND REDEVELOPMENT**

### **A. CERLCA Early Transfer to Clark County**

29. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et. seq., provides that contaminated federal property may, under certain conditions, be transferred to local ownership prior to the completion of remedial activities. This process is known as “early transfer” and is described at 42 U.S.C.



1 § 9620(h)(3)(C). This particular CERCLA early transfer is a conservation conveyance under  
2 10 U.S.C. § 2694(a). A conservation conveyance limits the use of the Property to conservation  
3 purposes.

4 30. Under the CERCLA early transfer process, the Army will convey the Early  
5 Transfer Parcel to Clark County. That conveyance will not involve the DNR Parcels, which are  
6 currently owned by DNR and leased to the Army. The terms and conditions of the CERCLA  
7 early transfer are set forth in the following documents:

8 (A) Finding of Suitability for Early Transfer (FOSET). Pursuant to 42 U.S.C.  
9 § 9620(h)(3)(C)(i), the Army must determine that the Early Transfer Parcel is suitable for early  
10 transfer. The Army's determination is set forth in the FOSET. At a facility not on the National  
11 Priorities List (NPL), the Governor of the state in which the facility is located makes the final  
12 determination that the property is suitable for transfer. Camp Bonneville is not on the NPL, thus  
13 Governor Gregoire will review the FOSET and determine the suitability for the early transfer of  
14 the Early Transfer Parcel.

15 (B) Environmental Services Cooperative Agreement (ESCA). Prior to entry of this  
16 Decree, the Army and Clark County entered into an ESCA, a grant agreement that provides  
17 funding for the environmental work necessary to meet the Cleanup and Long-Term Obligations  
18 of this Decree for the Property. The portions of the ESCA funding made available to Clark  
19 County for the performance of the Cleanup Obligations will be allocated to the BCRRT LLC.  
20 Clark County will retain the ESCA funding made available for the performance of the  
21 Long-Term Obligations.

22 (C) Deed. Following the entry of this Decree, the Army will execute a deed ("Deed")  
23 which will convey the Early Transfer Parcel to Clark County and will set forth restrictions and  
24 interim land use controls.

1    **B.     Transfer to BCRRT LLC for undertaking Cleanup Obligations**

2           31.     After the completion of the conveyance of the Early Transfer Parcel from the  
3   Army to Clark County under the CERCLA early transfer process, Clark County will  
4   immediately (within 24 hours) convey the Early Transfer Parcel to the BCRRT LLC. In addition  
5   to the conveyance of the Early Transfer Parcel, Clark County shall convey all necessary access  
6   and other rights it has to the BCRRT LLC for the BCRRT LLC to undertake its Cleanup  
7   Obligations on the DNR Parcels. These conveyances from Clark County to the BCRRT LLC are  
8   being undertaken for the express purpose of accomplishing the Cleanup Obligations on the  
9   Property as required by this Decree. The BCRRT LLC shall hold ownership of the Early  
10   Transfer Parcel during that time necessary to accomplish the Cleanup Obligations on the  
11   Property as set forth in this Decree.

12   **C.     Transfer to Clark County for Undertaking Long-Term Obligations and**  
13   **Redevelopment**

14           32.     Upon Ecology's issuance of the Notice of Completion for the entire Property  
15   under Section XII of this Decree, the BCRRT LLC will convey the Early Transfer Parcel to  
16   Clark County and within sixty (60) calendar days of the issuance of that Notice of Completion,  
17   Clark County will accept the Early Transfer Parcel. Clark County's development and use of the  
18   Early Transfer Parcel or Property is described in its Reuse Plan, Second Revision dated  
19   November 15, 2005, and is restricted to conservation purposes by the deed conveying the Early  
20   Transfer Parcel from the Army to Clark County.

21                   **VII.     ECOLOGY DETERMINATIONS**

22   **A.     Determinations for MTCA Prospective Purchaser Consent Decree**

23           33.     Ecology has not identified Clark County or the BCRRT LLC as a potentially  
24   liable person under RCW 70.105D.020(16), and Clark County and the BCRRT LLC are not  
25   currently liable under RCW 70.105D.040. If Clark County or the BCRRT LLC were to acquire  
26   an interest in the Property, then the Party acquiring such an interest could become liable as an

1 “owner or operator” under RCW 70.105D.040(1)(a). This Decree is entered prior to Clark  
2 County or the BCRRT LLC acquiring an interest in the Property and will resolve their potential  
3 liability for known or suspected contamination at the Site.

4 34. Upon entry of this Decree, Clark County will acquire ownership of the Early  
5 Transfer Parcel from the Army. This transfer will be conducted pursuant to the CERCLA early  
6 transfer process described in Section VI.A of this Decree. Upon acquisition of the Early Transfer  
7 Parcel, Clark County will immediately (within 24 hours) convey ownership of it to the BCRRT  
8 LLC for the purpose of meeting its Cleanup Obligations under this Decree. This subsequent  
9 transfer is described in Section VI.B of this Decree.

10 35. This Decree contains a program of remedial actions designed to protect human  
11 health and the environment from the known, suspected, or threatened release of hazardous  
12 substances at the Property based upon Clark County’s Reuse Plan described in Section VI.C of  
13 this Decree. The program is described in Section X of this Decree. The program, which  
14 includes both Cleanup Obligations and Long-Term Obligations, covers the entire Property,  
15 including both the Early Transfer Parcel and the DNR Parcels.

16 36. Under this Decree, the BCRRT LLC is responsible for undertaking the Cleanup  
17 Obligations defined in Section IV of this Decree. Those obligations are more specifically  
18 described in Section X.C of this Decree. Until the BCRRT LLC conveys the Early Transfer  
19 Parcel back to Clark County, the BCRRT LLC is also responsible for undertaking the  
20 Long-Term Obligations defined in Section IV of this Decree. Those obligations are more  
21 specifically described in Section X.D of this Decree. The BCRRT LLC is not required under this  
22 Decree to undertake any Long-Term Obligations on any portion of the Property that it does not  
23 own.

24 37. Under this Decree, Clark County is responsible for undertaking the Long-Term  
25 Obligations defined in Section IV of this Decree after the BCRRT LLC conveys the Early  
26 Transfer Parcel back to Clark County. Those obligations are more specifically described in

1 Section X.D of this Decree. Clark County is not required under this Decree to undertake any  
2 Long-Term Obligations on any portion of the Property that it does not own.

3 38. The ESCA covers and provides funding for both the Cleanup Obligations and  
4 Long-Term Obligations required under this Decree. The ESCA is described in Section VI.A of  
5 this Decree. The Parties understand that the Army will pay the costs incurred by Ecology  
6 pursuant to this Decree consistent with the DSMOA, described in Section XIII of this Decree.

7 39. The County proposes to redevelop the 3,020-acre portion of the Property  
8 currently owned by the Army as a County regional park and wildlife refuge. The proposed  
9 redevelopment project is described in Section VI.C of this Decree.

10 40. Pursuant to 42 U.S.C. § 9620(h)(3)(C)(i), the Governor of the State of  
11 Washington must determine that the Early Transfer Parcel is suitable for early transfer. The  
12 Army's determination of suitability and the findings supporting that determination are set forth in  
13 the Finding of Suitability for Early Transfer (FOSET).

14 41. Based on the foregoing facts and determinations, Ecology has determined that  
15 this settlement will yield substantial new resources to facilitate cleanup and expedite remedial  
16 action at the Site consistent with the rules adopted under MTCA.

17 42. Based on this settlement and the foregoing facts and determinations, Ecology has  
18 determined that the redevelopment of the Site is not likely to contribute to any existing or  
19 threatened releases at the Site, interfere with any remedial actions that may be needed at the Site,  
20 or increase health risks to persons at or in the vicinity of the Site.

21 43. Based on the foregoing facts and determinations, the Washington State Attorney  
22 General has the authority under RCW 70.105D.040(5) to agree to a settlement with Clark County  
23 and the BCRRT LLC and enter into this Decree.

24 **B. Determinations Under the Model Toxics Control Act (MTCA)**

25 44. The Site is a "facility" as defined in RCW 70.105D.020(4).

26 45. The Property is a portion of the facility.

1           46.     Certain substances found at the facility are “hazardous substances” as defined at  
2 RCW 70.105D.020(7).

3           47.     Based on the presence of these hazardous substances at the facility and all factors  
4 known to Ecology, there are releases and threatened releases of hazardous substances from the  
5 facility, as defined at RCW 70.105D.020(20).

6           48.     The releases and threatened releases of hazardous substances from the facility  
7 pose a threat to human health and the environment.

8           49.     Based on the foregoing facts, Ecology believes the remedial action required by  
9 this Decree is in the public interest.

10 **C.     Determinations Under the Hazardous Waste Management Act (HWMA)**

11           50.     The Site is a “facility” as defined at RCW 70.105.010(11) and in WAC  
12 173-303-040.

13           51.     The Property is a portion of the facility.

14           52.     The military munitions located at the facility are “solid wastes” as defined in  
15 WAC 173-303-016(3) and Paragraph 12 of this Decree.

16           53.     Certain military munitions located at the facility are also “dangerous wastes”  
17 and/or “dangerous constituents” as defined in RCW 70.105.010(5) and WAC 173-303-040, and  
18 in Paragraph 12 of this Decree.

19           54.     Based on the presence of these military munitions at the facility and all factors  
20 known to Ecology, there are releases and threatened releases of dangerous wastes and/or  
21 dangerous constituents from the facility, as defined in WAC 173-303-040.

22           55.     Based on the releases and threatened releases of dangerous wastes and/or  
23 dangerous constituents from the facility, the military munitions located at the facility are subject  
24 to corrective action under WAC 173-303-646.

25           56.     Based on the foregoing facts, Ecology believes the corrective action required by  
26 this Decree is necessary to protect human health and the environment

1           57.     The Washington State Attorney General is authorized by RCW 70.105.120, at the  
2 request of Ecology, to bring declaratory, injunctive or other actions as necessary to enforce the  
3 requirements of the HWMA.

#### 4                                   **VIII.     REMEDIAL ACTION UNITS**

5           58.     For the purpose of directing remedial action at the Property, the Property shall be  
6 administratively divided into three remedial action units. The second remedial action unit shall  
7 be further administratively divided into three subunits. These remedial action units are described  
8 below and illustrated in Exhibits B through F, attached hereto.

9           (A)     Remedial Action Unit 1 (RAU 1) consists of the 20 areas at the Property  
10 identified and illustrated in Exhibit B, and addresses any contamination associated with those  
11 areas and any risks to human health and the environment associated with such contamination.

12           (B)     Remedial Action Unit 2 (RAU 2) consists of the areas at the Property identified  
13 and illustrated in Exhibits C through E. RAU 2 shall be administratively divided into three  
14 subunits, identified and described below.

15                   (1)     Remedial Action Unit 2A (RAU 2A) consists of the 21 small arms range  
16 areas identified and illustrated in Exhibit C, and addresses any lead or other contamination  
17 associated with those areas and any risks to human health and the environment associated with  
18 such contamination.

19                   (2)     Remedial Action Unit 2B (RAU 2B) consists of Demolition Areas 2 and  
20 3, identified and illustrated in Exhibit D, and addresses any contamination associated with those  
21 areas and any risks to human health and the environment associated with such contamination.

22                   (3)     Remedial Action Unit 2C (RAU 2C) consists of Landfill Area 4 and  
23 Demolition Area 1, identified and illustrated in Exhibit E, and addresses any contamination  
24 associated with those areas and any risks to human health and the environment associated with  
25 such contamination.  
26

1 (C) Remedial Action Unit 3 (RAU 3) consists of any area at the Property where  
2 military munitions have come to be located and addresses any contamination associated with  
3 those areas and any risks to human health and the environment associated with such  
4 contamination. RAU 3 is identified and illustrated in Exhibit F.

5 59. The remedial action units defined in this Decree may be subdivided or combined  
6 by agreement of the Parties. Additional remedial action units may also be created by agreement  
7 of the Parties. Any such agreement will become an integral and enforceable part of this Decree  
8 upon entry by the Court as an amendment to this Decree.

## 9 IX. STATUS OF REMEDIAL ACTIONS

### 10 A. Overview

11 60. After the BRAC Commission identified the Camp Bonneville Military  
12 Reservation for closure in 1995, the Army conducted several site investigations and archive  
13 searches to identify releases or threatened releases of hazardous substances throughout the Site.  
14 Based on those initial investigations, the Army identified releases or threatened releases of  
15 hazardous substances in several areas throughout the Site and conducted several remedial actions  
16 to address those releases.

17 61. By letter dated July 1, 2002, Ecology notified the Army of its status as a  
18 “potentially liable person” under RCW 70.105D.040 after notice and opportunity for comment.

19 62. On February 4, 2003, Ecology issued Enforcement Order No. 03TCPHQ-5286  
20 (Order) to the Army pursuant to the authority of RCW 70.105D.050(1) and the authority of  
21 chapter 70.105 RCW and WAC 173-303-646(3)(a). The Order required the Army to conduct  
22 additional remedial actions to facilitate the comprehensive investigation and cleanup of the Site.

23 63. On June 16, 2004, Ecology issued the First Amendment of Enforcement Order  
24 No. 03TCPHQ-5286 to the Army. The amendment divided Remedial Action Unit 3 (RAU 3)  
25 into two subunits (RAU 3A and RAU 3B), modified the schedule and work to be performed for  
26 those two subunits, and updated the status of remedial actions. The Order, as amended, shall

1 remain in effect until entry of this Decree and the transfer of the Early Transfer Parcel from the  
2 Army to Clark County.

3 64. The remedial actions conducted by the Army prior to the entry of this Decree,  
4 including those conducted prior to the issuance of the Order, are described below.

5 **B. Remedial Action Unit 1**

6 65. In 1997, based on the initial site investigations and archive searches, the Army  
7 identified releases and threatened releases of hazardous substances at the 20 areas comprising  
8 RAU 1. From August 1996 to July 1999, the Army conducted several remedial investigations of  
9 those areas. In 1999 and 2000, the Army conducted several independent cleanup actions to  
10 address the contamination identified during those remedial investigations.

11 66. Under the original Order, the Army submitted to Ecology in April 2003 a draft  
12 Cleanup Action Plan (CAP) for RAU 1. The draft CAP describes the investigations and cleanup  
13 actions conducted and the results of those investigations and actions. The draft CAP also  
14 describes whether further action is required and the nature of any such action. In April 2004,  
15 after the Army revised the draft CAP based on Ecology's comments, the draft CAP was  
16 submitted for public comment. As of the effective date of the amended Order, the draft CAP had  
17 not been finalized. Under the amended Order, the Army submitted and Ecology approved the  
18 final CAP in July 2004. As of the effective date of this Decree, the restrictive covenants required  
19 under the CAP had not been recorded.

20 **C. Remedial Action Unit 2A**

21 67. In 1997, based on the initial site investigations and archive searches, the Army  
22 identified releases and threatened releases of hazardous substances at the 21 small arms ranges  
23 comprising RAU 2A. In November 2001, the Army conducted additional investigations to better  
24 define the location and geographic characteristics of the small arms ranges.

25 68. Under the original Order, the Army submitted to Ecology in April 2003 a draft  
26 Interim Action Work Plan for RAU 2A. In May 2003, Ecology submitted comments on that



1 draft Work Plan. In September 2003, the Army submitted to Ecology a draft final Work Plan.  
2 Ecology approved that draft final Work Plan. As of the effective date of the amended Order, the  
3 draft final Work Plan had not been submitted for public comment and finalized. As of the  
4 effective date of this Decree, the draft final Interim Action Work Plan for RAU 2A had still not  
5 been submitted for public comment and finalized.

6 69. Under the original Order, the Army also completed in April 2003 the remedial  
7 investigation of RAU 2A. The findings of that investigation are presented in the Field Work  
8 Report, which was finalized in September 2003. Based on the results of that investigation, the  
9 Army submitted to Ecology a draft Remedial Investigation / Feasibility Study (RI/FS) Report in  
10 October 2003. Ecology submitted comments on that draft report in December 2003. As of the  
11 effective date of this Order, the draft final RI/FS Report had not been submitted to Ecology.  
12 Under the amended Order, the Army completed and submitted to Ecology the draft final RI/FS  
13 Report in March 2005. Ecology approved that draft report. As of the effective date of this  
14 Decree, the draft final RI/FS Report for RAU 2A had not been submitted for public comment  
15 and finalized.

16 **D. Remedial Action Unit 2B**

17 70. In 1997, based on the initial site investigations and archive searches, the Army  
18 identified releases and threatened releases of hazardous substances at Demolition Area 2 and  
19 Demolition Area 3, the two open burning / open detonation (OB/OD) areas comprising RAU 2B.

20 71. Under the original Order, the Army completed in April 2003 the remedial  
21 investigation of RAU 2B. The findings of that investigation are presented in the Field Work  
22 Report, which was finalized in September 2003. Based on the results of that investigation, the  
23 Army also submitted to Ecology a draft Remedial Investigation (RI) Report in September 2003.  
24 Ecology submitted comments on that draft RI Report in November 2003. As of the effective  
25 date of the amended Order, the draft final RI Report for RAU 2B had not been submitted to  
26 Ecology.

1           72. Under the amended Order, the Army submitted the draft final RI Report (Site  
2 Investigation Report) in March 2005. Ecology approved that draft report. As of the effective  
3 date of this Decree, the draft final RI Report had not been submitted for public comment and  
4 finalized.

5 **E. Remedial Action Unit 2C**

6           73. In 1997, based on the initial site investigations and archive searches, the Army  
7 identified releases and threatened releases of hazardous substances at Landfill Area 4 /  
8 Demolition Area 1, the area comprising RAU 2C. In August 1999, the Army conducted several  
9 additional investigations.

10          74. Under the original Order, the Army submitted to Ecology in December 2003 a  
11 draft Interim Action Work Plan for RAU 2C. In April 2004, after the Army revised the draft  
12 Work Plan based on Ecology's comments, the draft Work Plan was submitted for public  
13 comment. In May 2004, the Army submitted the final Interim Action Work Plan for RAU 2C.  
14 The Army began mobilization and site preparation work required under that plan in May 2004.  
15 As of the effective date of the amended Order, the Army had not completed the work required  
16 under that Work Plan. Under the amended Order, the Army completed implementation of the  
17 Work Plan in January 2005. Activities and findings of the interim action are presented in the  
18 Interim Removal Action Report, which was finalized in November 2005.

19          75. Under the original Order, the Army also completed in February 2003 a remedial  
20 investigation of ground water for RAU 2C. The findings of that investigation are presented in  
21 the Field Work Report, which was finalized in May 2003. Based on the results of that  
22 investigation and the impact of the forthcoming interim actions to address soil contamination,  
23 Ecology determined that further investigation of the ground water were required. As of the  
24 effective date of the amended Order, the draft Remedial Investigation / Feasibility Study (RI/FS)  
25 Report for RAU 2C had not been submitted to Ecology. Under the amended Order, the Army  
26 continued to monitor contamination levels in ground water at RAU 2C on quarterly basis

1 pursuant to the Site-Wide Ground Water Investigation Work Plan. Findings of this investigation  
2 are presented in Ground Water Sampling and Analysis Reports. However, as of the effective  
3 date of this Decree, the draft RI/FS Report for RAU 2C had still not been submitted to Ecology.

4 **F. Remedial Action Unit 3**

5 76. In 1997, based on the initial site investigations and archive searches, the Army  
6 determined that military munitions, including unexploded ordnance (UXO), are present in  
7 several areas throughout the Site. In 1998, to determine the nature and extent of UXO  
8 throughout the Site, the Army conducted an investigation of the Site using a statistically-based  
9 sampling methodology. As a result of this investigation, the Army conducted a time-critical  
10 removal action on two former ordnance ranges and a surface clearance of Demolition Area 1.

11 77. In November 1998, the Army submitted to Ecology and the U.S. Environmental  
12 Protection Agency (EPA) a draft Engineering Evaluation and Cost Analysis (EE/CA) report  
13 based on the findings of the statistically-based investigation. This report identified locations of  
14 UXO, the hazards associated with UXO, the risks posed by UXO to future users of the land, and  
15 risk management alternatives, including a description of the effectiveness and cost of those  
16 alternatives. The Army submitted a second draft to Ecology and EPA in April 1999. Based on  
17 the inadequacy of the statistically-based sampling approach, Ecology and EPA determined that  
18 there was insufficient data to support the findings of the draft EE/CA.

19 78. In 2001, the Army evaluated the available photographic evidence to help identify  
20 areas of concern (AOCs) and areas of potential concern (AOPCs) throughout the Site. The Army  
21 subsequently conducted an instrument-aided reconnaissance effort to identify ordnance-related  
22 activities, as well as terrain and vegetation characteristics, associated with each of the previously  
23 identified AOCs and AOPCs. In 2002, the Army used this information, along with previously  
24 collected information, to conduct a screening analysis and develop a Conceptual Site Model  
25 (CSM). To test the CSM within designated reuse areas, the Army initiated a second phase of  
26 instrument-aided reconnaissance within the designated reuse areas.

1           79. Under the original Order, the Army completed the second phase of the instrument  
2 aided reconnaissance in February 2003. The findings of that reconnaissance effort are presented  
3 in the Field Work Report, which was finalized in May 2003. As of the effective date of the  
4 amended Order, the draft Remedial Investigation / Feasibility Study Report for RAU 3 had not  
5 been submitted to Ecology.

6           80. Under the amended Order, RAU 3 was administratively divided into two  
7 subunits, RAU 3A and RAU3B, which were defined in Part IV of that Order.

8           81. Under the amended Order, the Army submitted to Ecology a draft Remedial  
9 Investigation / Feasibility Study (RI/FS) Report for RAU 3 in November 2004. Ecology  
10 submitted its comments on that draft report in February 2005. In August 2005, Ecology  
11 submitted the draft RI/FS Report for public comment. In response to the comments received,  
12 Ecology completed a Responsiveness Summary. As of the effective date of this Decree, the  
13 RI/FS Report had not been finalized based on the comments received.

14 **G. Investigation and Monitoring of Site-Wide Ground Water**

15           82. In February 2002, the Army developed a Site-Wide Ground Water Investigation  
16 Work Plan to analyze ground water at the property boundary of the Camp Bonneville Military  
17 Reservation using sentinel wells. The Work Plan was designed to help determine whether  
18 on-site ground water contamination has migrated beyond the property boundary of the CBMR.  
19 In December 2002, the Army installed four monitoring well pairs at the western property  
20 boundary near Lacamas Creek. The findings of that investigation are presented in the Field  
21 Work Report, which was finalized in April 2003 under the original Order. As of the effective  
22 date of the amended Order, the draft Long-Term Ground Water Monitoring and Contingency  
23 Plan had not been submitted to Ecology.

24           83. Under the amended Order, the Army continued to monitor ground water in  
25 site-wide monitoring wells. Findings of this investigation are presented in Ground water  
26

1 Sampling and Analysis Reports. As of the effective date of this Decree, the draft Long-Term  
2 Ground Water Monitoring and Contingency Plan had not been submitted to Ecology.

## 3 **X. WORK TO BE PERFORMED**

### 4 **A. Overview**

5 84. This Decree contains a program designed to protect human health and the  
6 environment from the known, suspected, or threatened release of hazardous substances at the  
7 Property based upon Clark County's Reuse Plan described in Section VI.C of this Decree. This  
8 Section of the Decree sets forth the remedial actions that are required to implement that program,  
9 the schedule for completing those remedial actions, and which Party is responsible for  
10 developing or completing those remedial actions.

11 85. The BCRRT LLC is responsible for undertaking the Cleanup Obligations defined  
12 in Section IV of this Decree. Those obligations are more specifically described in Section X.C  
13 of this Decree. The BCRRT LLC shall make all reasonable efforts to secure access rights for  
14 those portions of the Property not owned or controlled by it where Cleanup Obligations will be  
15 undertaken pursuant to this Decree. The BCRRT LLC is also responsible for undertaking the  
16 Long-Term Obligations defined in Section IV of this Decree until it conveys the Early Transfer  
17 Parcel back to Clark County. Those obligations are more specifically described in Section X.D  
18 of this Decree. The BCRRT LLC is not required under this Decree to undertake any Long-Term  
19 Obligations on any portion of the Property that it does not own.

20 86. Clark County is responsible for undertaking the Long-Term Obligations defined  
21 in Section IV of this Decree after the BCRRT LLC conveys the Early Transfer Parcel back to  
22 Clark County. Those obligations are more specifically described in Section X.D of this Decree.  
23 Clark County is not required under this Decree to undertake any Long-Term Obligations on any  
24 portion of the Property that it does not own.

25 87. The BCRRT LLC and Clark County agree to undertake their respective remedial  
26 actions and to conduct such actions in accordance with chapter 173-340 WAC unless otherwise

1 specifically provided for herein. The BCRRT LLC and Clark County agree not to perform any  
2 remedial actions outside the scope of this Decree unless the Parties agree to amend the Decree to  
3 cover those actions.

4 88. The Parties acknowledge that while the Site may encompass areas beyond the  
5 boundaries of the Property, this Decree does not require Clark County or the BCRRT LLC to  
6 develop or conduct any remedial actions in any area beyond the boundaries of the Property. The  
7 Parties agree that the remedial actions required under this Decree shall be limited to the areas  
8 within the boundaries of the Property.

9 **B. Conceptual Remedial Action Plan**

10 89. As part of the early transfer process described in Section VI.A of this Decree, the  
11 Army and Clark County negotiated an ESCA that provides funding for the investigation and  
12 cleanup of the Property after the conveyance of the Early Transfer Parcel. To enable the Army  
13 and Clark County to estimate the potential cost of that remediation, the Parties jointly developed  
14 a Conceptual Remedial Action Plan, attached hereto as Exhibit H, generally describing  
15 additional remedial actions that may be required at the Property under chapter 173-340 WAC,  
16 based on the information that was available from Ecology and the Army at the time the Decree  
17 was entered. The Conceptual Remedial Action Plan does not represent the final decision of  
18 Ecology with respect to the investigation and cleanup of the Property and is not a Cleanup  
19 Action Plan as described in WAC 173-340-360. The schedules for development of the necessary  
20 remedial action plans and reports, and opportunities for public participation, are set forth below.

21 **C. Work to be Performed by the BCRRT LLC: Cleanup Obligations**

22 **Deliverables and Schedule – Emergency Actions**

23 90. For **RAU 3**, the BCRRT LLC shall conduct emergency actions for the purpose of  
24 restricting access to the Property during the investigation and cleanup of the Property and  
25 reducing the threat to human health and safety associated with military munitions and other  
26

1 contamination located within the Property. Those emergency actions shall include, but shall not  
2 be limited to, the following:

3 (A) Emergency Actions at Property Perimeter:

4 (1) Conduct brush clearing and surface clearance of MEC within 10 feet of  
5 the interior of the Property perimeter fence line. If an item of MEC is found within a grid of the  
6 designated clearance area, then remediate that item. If either an item of MEC or a pattern of  
7 similar forensic evidence of a particular type of military munitions is found within a boundary  
8 grid, then also conduct step-out clearance as defined in Section IV of this Decree. The step-out  
9 grid(s) for this action shall be 100-feet by 100-feet and shall be surface cleared on the Property,  
10 but not off the Property. If a step-out grid extends beyond the boundary of the Property, the  
11 BCRRT LLC shall notify Ecology and the Army. As data is collected during the surface  
12 clearance, the Anomalies Selection Board (ASB), which is defined in Section IV of this Decree,  
13 shall determine whether detected surface and subsurface anomalies should be further investigated  
14 and remediated.

15 (2) Following MEC clearance of the Property perimeter, repair and/or replace  
16 the perimeter fencing and install new signs on the fence at 50-foot intervals.

17 (B) Emergency Actions at Central Impact Target Area (CITA) Perimeter:

18 (1) Conduct brush clearing and surface clearance of MEC within 10 feet of  
19 the interior of the CITA perimeter fence line. If an item of MEC is found within a grid of the  
20 designated clearance area, then remediate that item. If an item of MEC or a pattern of similar  
21 forensic evidence of a particular type of military munitions is found within a boundary grid, then  
22 also conduct step-out clearance as defined in Section IV of this Decree. The step-out grid(s) for  
23 this action shall be 100-feet by 100-feet and shall be surface cleared. As data is collected during  
24 the surface clearance, the Anomalies Selection Board (ASB), which is defined in Section IV of  
25 this Decree, shall determine whether detected surface and subsurface anomalies should be further  
26 investigated and remediated.

1 (2) Following MEC clearance of CITA perimeter, repair and/or replace the  
2 perimeter fencing and install new signs on the fence at 50-foot intervals.

3 (C) Interim Restrictive Covenants for Property:

4 Within thirty (30) calendar days of the transfer of the Early Transfer Parcel  
5 from the Army to Clark County, Clark County will record interim restrictive covenants with  
6 the office of the Clark County Auditor. The interim restrictive covenants will:

- 7 (1) Prohibit public access to the Property;  
8 (2) Restrict use of ground water from the Property;  
9 (3) Restrict digging at the Property to qualified MEC personnel; and  
10 (4) Require the preservation of cultural and archaeological sites.

11 The BCRRT LLC shall implement these interim institutional controls.

12 91. In support of the emergency actions, the BCRRT LLC shall submit the following  
13 deliverables for Ecology review and approval, in accordance with the schedule shown below:

14 (A) Draft Emergency Action Work Plan submitted to Ecology within fifteen (15)  
15 calendar days of the effective date of this Decree. The Work Plan shall meet the submittal  
16 requirements in WAC 173-340-430(7).

17 (B) Draft Emergency Action Report, described in Paragraph 107 of this Decree,  
18 submitted to Ecology within thirty (30) calendar days of completing the work required in the  
19 final Emergency Action Work Plan.

20 **Deliverables and Schedule – Interim Actions**

21 92. For **RAU 2A**, the BCRRT LLC shall conduct interim actions for the purpose of  
22 facilitating future cleanup actions and reducing the threat to human health and the environment  
23 associated with lead and other contamination located in some of the small arms ranges identified  
24 and illustrated in Exhibit C. Those interim actions shall include, but shall not be limited to,  
25 conducting brush clearance and surface clearance of MEC in a buffer zone surrounding each of  
26 the small arms ranges. If an item of MEC is found within a grid of the designated clearance area,



1 then remediate that item. If either an item of MEC or a pattern of similar forensic evidence of a  
2 particular type of military munitions is found within a boundary grid, then also conduct step-out  
3 clearance as defined in Section IV of this Decree. The step-out grid(s) for this action shall be  
4 surface cleared. As data is collected during the surface clearance, the Anomalies Selection Board  
5 (ASB), which is defined in Section IV of this Decree, shall determine whether detected surface  
6 and subsurface anomalies should be further investigated and remediated.

7 93. In support of the interim actions for **RAU 2A**, the BCRRT LLC shall submit the  
8 following deliverables for Ecology review and approval, in accordance with the schedule shown  
9 below:

10 (A) Draft final Interim Action Work Plan for RAU 2A, that reflects public comment,  
11 submitted to Ecology within ninety (90) calendar days of the effective date of this Decree. The  
12 Work Plan shall meet the submittal requirements in WAC 173-340-430(7).

13 (B) Draft Interim Action Report, described in Paragraph 108 of this Decree,  
14 submitted to Ecology within thirty (30) calendar days of completing the work required in the  
15 final Interim Action Work Plan for RAU 2A.

16 94. For **RAU 3**, the BCRRT LLC shall conduct interim actions for the purpose of  
17 completing the remedial investigation and feasibility study for RAU 3 and reducing the threat to  
18 human health and the environment associated with the military munitions located within RAU 3.  
19 Those interim actions shall include, but shall not be limited to, surface clearance of MEC within  
20 a 20-foot wide buffer zone adjacent to both sides of all roads and trails found within the Property  
21 including those roads and trails found within the CITA.

22 95. In support of the interim actions for **RAU 3**, the BCRRT LLC shall submit the  
23 following deliverables for Ecology review and approval, in accordance with the schedule shown  
24 below:  
25  
26

1 (A) Draft Interim Action Work Plan for RAU 3 submitted to Ecology within sixty  
2 (60) calendar days of the effective date of this Decree. The Work Plan shall meet the submittal  
3 requirements in WAC 173-340-430(7).

4 (B) Within sixty (60) calendar days of the issue date of the final Interim Action Work  
5 Plan for RAU 3, begin implementation of the interim actions set forth in the final Interim Action  
6 Work Plan for RAU 3B (mobilization).

7 (C) Draft Interim Action Report, described in Paragraph 108 of this Decree,  
8 submitted to Ecology within thirty (30) calendar days of completing the work required in the  
9 final Interim Action Work Plan for RAU 3.

10 **Deliverables and Schedule – Final Actions**

11 96. For **RAU 1**, the BCRRT LLC shall submit to Ecology for review and approval  
12 the draft Restrictive Covenants required under the final Cleanup Action Plan for RAU 1 within  
13 thirty (30) calendar days of the effective date of this Decree.

14 97. For **RAU 2A**, the BCRRT LLC shall submit the following deliverables for  
15 Ecology review and approval, in accordance with the schedule shown below:

16 (A) Final Remedial Investigation/Feasibility Study (RI/FS) Report, that reflects public  
17 comments, submitted to Ecology within six (6) months of the effective date of this Decree.

18 (B) Draft Cleanup Action Plan (CAP) submitted to Ecology within sixty (60)  
19 calendar days of the issue date of the final RI/FS Report for RAU 2A.

20 (C) Draft Compliance Monitoring Plan submitted to Ecology within thirty (30)  
21 calendar days of the issue date of the final CAP for RAU 2A.

22 (D) Draft Cleanup Action Report, described in Paragraph 109 of this Decree,  
23 submitted to Ecology within thirty (30) calendar days of completion of the work required in the  
24 final CAP for RAU 2A.

1 (E) Draft Long-Term Operation and Maintenance Plan, described in Paragraph 111 of  
2 this Decree, submitted to Ecology within sixty (60) calendar days of completion of the work  
3 required in the final CAP for RAU 2A, if required.

4 98. For **RAU 2B**, the BCRRT LLC shall submit the draft final Remedial  
5 Investigation (RI) Report, that reflects public comments, to Ecology within nine (9) months of  
6 the effective date of this Decree for Ecology review and approval.

7 99. For **RAU 2C**, the BCRRT LLC shall submit the following deliverables for  
8 Ecology review and approval, in accordance with the schedule shown below:

9 (A) Draft Remedial Investigation/Feasibility Study (RI/FS) Report, submitted to  
10 Ecology within thirty (30) calendar days of the completion of the work required in the final  
11 Supplemental Ground Water Remedial Investigation Work Plan for RAU 2C and RAU 3 (see  
12 Paragraph 101(A) of this Decree).

13 (B) Draft Cleanup Action Plan (CAP) submitted to Ecology within sixty (60)  
14 calendar days of the issue date of the final RI/FS Report for RAU 2C.

15 (C) Draft Compliance Monitoring Plan submitted to Ecology within thirty (30)  
16 calendar days of the issue date of the final CAP for RAU 2C.

17 (D) Draft Cleanup Action Report, described in Paragraph 109 of this Decree,  
18 submitted to Ecology within thirty (30) calendar days of completion of the work required in the  
19 final CAP for RAU 2C.

20 (E) Draft Long-Term Operation and Maintenance Plan, described in Paragraph 111 of  
21 this Decree, submitted to Ecology within sixty (60) calendar days of completion of the work  
22 required in the final CAP for RAU 2C, if required.

23 100. For **RAU 3**, the BCRRT LLC shall submit the following deliverables for Ecology  
24 review and approval, in accordance with the schedule shown below:  
25  
26

1 (A) Draft final Remedial Investigation/Feasibility Study (RI/FS) Report, that reflects  
2 public comments, submitted to Ecology within four (4) months of the effective date of this  
3 Decree.

4 (B) Draft Cleanup Action Plan (CAP) submitted to Ecology within four (4) months of  
5 the issue date of the final RI/FS Report for RAU 3.

6 (C) Draft Compliance Monitoring Plan submitted to Ecology within thirty (30)  
7 calendar days of the issue date of the final CAP for RAU 3.

8 (D) Draft Cleanup Action Report, described in Paragraph 109 of this Decree,  
9 submitted to Ecology within thirty (30) calendar days of completion of the work required in the  
10 final CAP for RAU 3.

11 (E) Draft Long-Term Operation and Maintenance Plan, described in Paragraph 111 of  
12 this Decree, submitted to Ecology within sixty (60) calendar days of completion of the work  
13 required in the final CAP for RAU 3, if required.

14 101. In support of **RAU 2C and RAU 3**, the BCRRT LLC shall also submit the  
15 following deliverables to Ecology for review and approval, in accordance with the schedule  
16 shown below:

17 (A) Draft Supplemental Ground Water Remedial Investigation Work Plan for RAU  
18 2C and RAU 3 submitted to Ecology within thirty (30) calendar days of the effective date of this  
19 Decree.

20 (B) Draft Supplemental Soil Remedial Investigation Work Plan for RAU 3 submitted  
21 to Ecology within ninety (90) calendar days of the effective date of this Decree.

22 (C) Draft Supplemental Soil Remedial Investigation Report for RAU 3 submitted to  
23 Ecology within thirty (30) calendar days of the effective date of this Decree.

24 102. For the **Property**, the BCRRT LLC shall submit the following deliverables for  
25 Ecology review and approval, in accordance with the schedule shown below:  
26

1 (A) Draft MEC Findings Report, described in Paragraph 110 of this Decree,  
2 submitted to Ecology within sixty (60) calendar days of the completion of the cleanup required  
3 under Section X.C of this Decree.

4 (B) Draft Long-Term Operation and Maintenance Plan, as described in Paragraph 111  
5 of this Decree, submitted to Ecology within ninety (90) calendar days of the completion of the  
6 cleanup required under Section X.C of this Decree, if required.

7 **D. Work to be Performed by Clark County: Long-Term Obligations**

8 103. The BCRRT LLC shall be responsible for undertaking the Long-Term  
9 Obligations defined in Section IV of this Decree until it conveys the Early Transfer Parcel back  
10 to Clark County. The BCRRT LLC is not required under this Decree to undertake any  
11 Long-Term Obligations on any portion of the Property that it does not own.

12 104. Clark County shall be responsible for undertaking the Long-Term Obligations  
13 defined in Section IV of this Decree after the BCRRT LLC conveys the Early Transfer Parcel  
14 back to Clark County. Clark County is not required under this Decree to undertake any  
15 Long-Term Obligations on any portion of the Property that it does not own. If Clark County  
16 does not acquire ownership of the DNR Parcels prior to issuance of the Notice of Completion for  
17 RAU 3 under Section XII of this Decree, then Clark County shall not be responsible for any  
18 Long-Term Obligations on the DNR Parcels unless and until Clark County acquires ownership  
19 of the DNR Parcels.

20 105. The Long-Term Obligations for each RAU will be specified in the final  
21 Long-Term Operation and Maintenance Plan for that RAU. Upon issuance of the Notice of  
22 Completion for the Property under Section XII of this Decree, all of the Long-Term Obligations  
23 for the Property will be specified in the final Long-Term Operation and Maintenance Plan for the  
24 Property. Additional Long-Term Obligations are specified in this Decree.

1 **E. Description of Deliverables**

2 106. The **Remedial Investigation Work Plan** prepared for a RAU shall conform to  
3 the requirements in chapter 173-340 WAC and shall include, but shall not be limited to, the  
4 following plans:

- 5 (A) Work Plan;
- 6 (B) Health and Safety Plan;
- 7 (C) Sampling and Analysis Plan;
- 8 (D) Quality Assurance Plan;
- 9 (E) Data Management Plan; and
- 10 (F) Cultural and Historical Resources Protection Plan.

11 107. The **Emergency Action Report** shall include, but shall not be limited to, the  
12 following information:

- 13 (A) Summary of any emergency actions conducted;
- 14 (B) Results of any emergency actions conducted; and
- 15 (C) Description of each item of MEC found during the emergency action, including,

16 but not limited to, the following information:

- 17 (1) Identification of the MEC item;
- 18 (2) Description of the fusing condition of the MEC item; and
- 19 (3) Description of the location and depth of the MEC item.

20 108. The **Interim Action Report** prepared for a RAU shall include, but shall not be  
21 limited to, the following information:

- 22 (A) Summary of any interim actions conducted;
- 23 (B) Results of any interim actions conducted; and
- 24 (C) Description of each item of MEC found during the interim action, including, but

25 not limited to, the following information:

- 26 (1) Identification of the MEC item;

(2) Description of the fusing condition of the MEC item; and

(3) Description of the location and depth of the MEC item.

109. The **Cleanup Action Report** prepared for a RAU shall include, but shall not be limited to, the following information:

(A) Summary of any remedial investigations conducted;

(B) Summary of any interim or cleanup actions conducted;

(C) Results of any interim or cleanup actions conducted;

(D) Results of any compliance monitoring conducted; and

(E) Description of each item of MEC found during the investigation and cleanup of the RAU, including, but not limited to, the following information:

(1) Identification of the MEC item;

(2) Description of the fusing condition of the MEC item; and

(3) Description of the location and depth of the MEC item.

110. The MEC **Findings Report** prepared for RAU 3 shall include a description of each item of MEC found at the Property during the investigation and cleanup of the Property, including items of MEC found during an investigation or cleanup conducted under a RAU other than RAU 3. The description of each item of MEC shall include, but shall not be limited to, the following information:

(A) Identification of the MEC item;

(B) Description of the fusing condition of the MEC item; and

(C) Description of the location and depth of the MEC item.

111. The **Long-Term Operation and Maintenance Plan** prepared for a RAU shall include all remedial actions at the RAU that are necessary to ensure the long-term effectiveness of the cleanup completed at the RAU by the BCRRT LLC under Section X.C of this Decree. Those remedial actions are defined in Section IV of this Decree as “Long-Term Obligations” and are described more specifically in Section X.D of this Decree. The Long-Term Operation and

1 Maintenance Plan prepared for the Property shall combine together the final Long-Term  
2 Operation and Maintenance Plan for each RAU and include all remedial actions on the Property  
3 that are necessary to ensure the long-term effectiveness of the cleanup completed by the BCRRT  
4 LLC under Section X.C of this Decree.

5 112. The BCRRT LLC shall include a **Cultural and Historical Resources Protection**  
6 **Plan** as part of any remedial investigation work plan, emergency action work plan, interim action  
7 work plan, cleanup action plan, or long-term operation and maintenance plan. The plan shall  
8 include, but shall not be limited to, the following information:

9 (A) Plan for identifying cultural and historical resources; and

10 (B) Plan for protecting identified cultural and historical resources.

11 113. The BCRRT LLC shall include a **Cultural and Historical Resources Protection**  
12 **Report** as part of any emergency action report, interim action report, cleanup action report, or  
13 UXO findings report. The report shall include a description of each cultural resource found  
14 during the implementation of the plan. The description of each cultural resource shall include,  
15 but shall not be limited to, the following information:

16 (A) Identification of the cultural resource; and

17 (B) Description of the disposition of the cultural resource.

18 **F. Due Dates for Deliverables**

19 114. If the final day of any time period falls on a Saturday, Sunday, or a state or  
20 federal legal holiday, the time period shall be extended to the next working day. Any time period  
21 scheduled to begin on the occurrence of an act or event shall begin on the day after the act or  
22 event. The deliverable due date shall be considered satisfied if the deliverable is received  
23 electronically on the date due, and the “original” hard copy is received within two (2) working  
24 days.



1 **G. Submittal of Deliverables**

2 115. In accordance with WAC 173-340-840(2), the BCRRT LLC shall submit to  
3 Ecology an electronic copy and three (3) hard copies of each deliverable identified in this Order  
4 (including both draft and draft final documents). The electronic copy must be submitted in a  
5 format compatible with, and approved by, Ecology. Ecology may require additional copies to  
6 meet public participation and interagency coordination needs.

7 **H. Review, Comment, and Approval Process for Deliverables**

8 116. The BCRRT LLC shall submit deliverables to Ecology in accordance with the  
9 schedule set forth herein. From the date Ecology receives the draft document, the following  
10 process will ensue:

11 (A) Within thirty (30) calendar days of receiving the BCRRT LLC's draft document,  
12 Ecology will notify the BCRRT LLC in writing of whether the draft document is adequate.

13 (1) If Ecology identifies inadequacies in the draft document, then Ecology  
14 will provide the BCRRT LLC with comments. Any such inadequacies may be discussed during  
15 the monthly Project Coordinator Meetings.

16 (2) If Ecology does not identify inadequacies in the draft document, then  
17 Ecology will, at its discretion, approve the draft document. A draft document only becomes  
18 "final" upon Ecology approval.

19 (B) Within thirty (30) calendar days of receiving Ecology's comments on a draft  
20 document, the BCRRT LLC will submit to Ecology a "draft final" document along with a  
21 response to comments identifying how comments were addressed.

22 (C) Within thirty (30) calendar days of receiving the BCRRT LLC's draft final  
23 document and response to comments on the draft document, Ecology will notify the BCRRT  
24 LLC in writing of whether the draft final document adequately addresses Ecology's comments  
25 on the draft document.  
26

1 (1) If Ecology identifies inadequacies in the draft final document and/or the  
2 response to comments, then Ecology will, at its discretion, either revise and approve the  
3 document or require the BCRRT LLC to revise and resubmit the document within thirty (30)  
4 calendar days for approval.

5 (2) If Ecology does not identify inadequacies in the draft final document or  
6 the response to comments, then, within thirty (30) calendar days, Ecology will, at its discretion,  
7 approve the draft final document. A draft final document only becomes “final” upon Ecology  
8 approval.

9 (D) In accordance with WAC 173-340-430(6), prior to the approval of a draft final  
10 interim action work plan, Ecology will provide or require public notice and opportunity for  
11 comment on the document and proposed interim action as required under WAC  
12 173-340-600(16). After review and consideration of the comments received during the public  
13 comment period, Ecology will, at its discretion, either approve the document or require the  
14 BCRRT LLC to revise and resubmit the document within thirty (30) calendar days for approval.

15 (E) In accordance with WAC 173-340-350(5), prior to approval of a draft final  
16 remedial investigation or feasibility study report, Ecology will provide or require public notice  
17 and opportunity to comment on the document, as required under WAC 173-340-600(13). After  
18 review and consideration of the comments received during the public comment period, Ecology  
19 will, at its discretion, either approve the document or require the BCRRT LLC to revise and  
20 resubmit the document within thirty (30) calendar days for approval.

21 (F) In accordance with WAC 173-340-380(2), prior to approval of a draft final CAP,  
22 Ecology will provide or require public notice and opportunity for comment on the document, as  
23 required under WAC 173-340-600(14). After review and consideration of the comments  
24 received during the public comment period, Ecology will, at its discretion, either approve the  
25 document or require the BCRRT LLC to revise and resubmit the document within thirty (30)  
26 calendar days for approval.

1 117. Ecology may extend the thirty (30) calendar day period for reviewing and  
2 commenting on a document by providing oral or written notification to the BCRRT LLC, prior to  
3 expiration of the thirty (30) calendar day period. Ecology will provide an estimate of the time  
4 required for completion of its review.

5 118. The BCRRT LLC may request an extension of the thirty (30) calendar day period  
6 for submitting a document and responses to comments by providing written notification to  
7 Ecology prior to expiration of the thirty (30) calendar day period. Any such request must be  
8 made in accordance with Section XI of this Decree.

9 **I. Enforceability and Implementation of Deliverables**

10 119. Upon approval by Ecology, each of the deliverables identified in this Decree shall  
11 be incorporated by reference and become an integral and enforceable part of this Decree, and  
12 shall be implemented by the BCRRT LLC in accordance with its terms and schedules, and in  
13 accordance with the applicable laws and the applicable CAPs.

14 **XI. EXTENSION OF SCHEDULE**

15 120. Clark County and/or the BCRRT LLC may request an extension of schedule. An  
16 extension of schedule shall be granted only when a request for an extension is submitted in a  
17 timely fashion, generally at least fourteen (14) calendar days prior to expiration of the deadline  
18 for which the extension is requested, and good cause exists for granting the extension. All  
19 extensions shall be requested in writing. The request shall specify:

- 20 (A) The deadline that is sought to be extended;  
21 (B) The length of the extension sought;  
22 (C) The reason(s) for the extension; and  
23 (D) Any related deadline or schedule that would be affected if the extension were  
24 granted.

25 121. The burden shall be on Clark County and/or the BCRRT LLC to demonstrate to  
26 the satisfaction of Ecology that the request for such extension has been submitted in a timely

1 fashion and that good cause exists for granting the extension. Good cause includes, but is not  
2 limited to:

3 (A) Circumstances beyond the reasonable control and despite the due diligence of  
4 Clark County and/or the BCRRT LLC including delays caused by unrelated third parties or  
5 Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
6 documents submitted by Clark County and/or the BCRRT LLC;

7 (B) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other  
8 unavoidable casualty; or

9 (C) Endangerment as described in Section XXV of this Decree.

10 However, neither increased costs of performance of the terms of the Decree nor changed  
11 economic circumstances shall be considered circumstances beyond the reasonable control of  
12 Clark County or the BCRRT LLC.

13 122. Ecology shall act upon any written request for extension in a timely fashion.  
14 Ecology shall give Clark County and the BCRRT LLC written notification in a timely fashion of  
15 any extensions granted pursuant to this Decree. A requested extension shall not be effective until  
16 approved by Ecology or, if required, by the Court. Unless the extension is a substantial change,  
17 it shall not be necessary to amend this Decree pursuant to Section XXXIV of this Decree when a  
18 schedule extension is granted.

19 123. An extension shall only be granted for such period of time as Ecology determines  
20 is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety  
21 (90) calendar days only as a result of:

22 (A) Delays in the issuance of a necessary permit which was applied for in a timely  
23 manner;

24 (B) Other circumstances deemed exceptional or extraordinary by Ecology; or

25 (C) Endangerment as described in Section XXV of this Decree.  
26

1                                   **XII.       COMPLETION OF REMEDIAL ACTIONS**

2           124.   Upon written request by the BCRRT LLC and Ecology's determination that the  
3 work required pursuant to Section X.C of this Decree at a RAU has been completed by the  
4 BCRRT LLC, Ecology shall issue the BCRRT LLC a written Notice of Completion within sixty  
5 (60) calendar days of the request stating that the work required by the BCRRT LLC under the  
6 Decree at that RAU has been satisfactorily completed. If Ecology instead determines that all of  
7 the work required at a RAU has not been completed, then Ecology will notify the BCRRT LLC  
8 what work must still be completed at that RAU.

9           125.   Upon written request by the BCRRT LLC and Ecology's determination that all of  
10 the work required pursuant to Section X.C of this Decree at the Property has been completed by  
11 the BCRRT LLC, Ecology shall issue the BCRRT LLC a written Notice of Completion within  
12 sixty (60) calendar days of the request stating that the work required by the BCRRT LLC under  
13 the Decree has been satisfactorily completed. If Ecology instead determines that all of the work  
14 required at the Property has not been completed, then Ecology will notify the BCRRT LLC what  
15 work must still be completed at the Property.

16                                   **XIII.     REMEDIAL ACTION COSTS**

17           126.   The Parties acknowledge and understand that the Army has agreed to pay the  
18 costs incurred by Ecology pursuant to this Decree consistent with WAC 173-340-550(2) and the  
19 provisions of the Defense-State Memorandum of Agreement (DSMOA) entered into by the State  
20 of Washington and Department of Defense on February 3, 1994, as amended. These costs shall  
21 include work performed by Ecology or its contractors for, or on, the Site under chapter 70.105D  
22 RCW, including remedial actions and Decree preparation, negotiation, oversight and  
23 administration. Ecology costs shall include costs of direct activities and support costs of direct  
24 activities as defined in WAC 173-340-550(2).

**XIV. PROJECT COORDINATION**

**A. Designated Project Coordinators**

127. The project coordinator for Ecology is:

Name: Ben Forson  
Address: Toxics Cleanup Program  
P.O. Box 47600  
Olympia, WA 98504-7600  
Telephone: (360) 407-7227  
Fax: (360) 407-7154  
E-mail: bfor461@ecy.wa.gov

128. The project coordinator for Clark County is:

Name: Brian Vincent  
Address: Clark County Department of Public Works  
P.O. Box 5000  
Vancouver, WA 98666-5000  
Telephone: (360) 397-2446  
Fax: (360) 759-6212  
E-mail: brian.vincent@clark.wa.gov

129. The project coordinator for the BCRRT LLC is:

Name: Michael J. Gage  
Address: 1701 Old Pecos Trail  
Santa Fe, New Mexico 87505  
Telephone: (505) 699-1214  
Fax: (505) 954-7309  
E-mail: mike.gage@tpl.org

130. Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Property. To the maximum extent possible, communications among Ecology, Clark County, and the BCRRT LLC and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor changes to the work to be

1 performed without formal amendments to this Decree. Minor changes will be documented in  
2 writing by Ecology. Substantial changes shall require amendment of this Decree.

3 131. Any Party may change its respective project coordinator. Written notification  
4 shall be given to the other Parties at least ten (10) calendar days prior to the change.

5 **B. Project Coordinator Meetings (Monthly)**

6 132. Project Coordinator meetings shall be held on a monthly basis. Upon the  
7 agreement of the Parties, telephone conference calls may be held in lieu of face-to-face meetings.  
8 Additional Project Coordinator meetings may be held by agreement of the Parties. Project  
9 Coordinator meetings shall include a discussion of the topics required to be addressed as part of  
10 the Quarterly Progress Reports (see Paragraph 133 of this Decree).

11 **C. Progress Reports (Quarterly)**

12 133. The BCRRT LLC shall submit to Clark County and Ecology written quarterly  
13 progress reports which describe the actions taken during the previous quarter to implement the  
14 requirements of this Decree. The progress report shall include the following:

15 (A) Description of on-Property actions taken during the previous quarter;

16 (B) Description of on-Property actions scheduled to be taken during the next quarter;

17 (C) Identification of deliverables submitted during the previous quarter and the dates  
18 of submittal;

19 (D) Identification of deliverables anticipated for submittal during the next quarter and  
20 the anticipated dates of submittal;

21 (E) Description of any deviation from the required actions not otherwise documented  
22 in project plans or amendment requests;

23 (F) Description of any deviation from the schedule during the previous quarter and  
24 any planned deviation in the next quarter;

25 (G) For any deviation in schedule, a plan for attempting to recover lost time and  
26 maintain compliance with the schedule;

1 (H) All field and laboratory data, including all validated and non-validated data,  
2 received or generated by the BCRRT LLC and/or Clark County during the previous quarter and  
3 an identification of the source of the sample; and

4 (I) Description of any key staffing changes.

5 134. All progress reports shall be submitted by the tenth calendar day of each quarter.  
6 Unless otherwise specified, progress reports and any other documents submitted pursuant to this  
7 Decree shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

#### 8 **XV. PERIODIC REVIEW**

9 135. As remedial action, including ground water monitoring, continues at the Property,  
10 the Parties agree to review the progress of remedial action at the Property, and to review the data  
11 accumulated as a result of Property monitoring as often as is necessary and appropriate under the  
12 circumstances. At least every five years after the initiation of cleanup action at the Property  
13 (mobilization), the Parties shall meet to discuss the status of the Property and the need, if any, of  
14 further remedial action at the Property. After the dismissal of the BCRRT LLC under Section  
15 XXXIII of this Decree, Clark County shall submit a report to Ecology ninety (90) calendar days  
16 before every 5-year anniversary of the date of dismissal that addresses the review criteria in  
17 WAC 173-340-420. This provision shall remain in effect for the duration of the Decree.

#### 18 **XVI. RESOLUTION OF DISPUTES**

19 136. In the event a dispute arises as to an approval, disapproval, proposed change, or  
20 other decision or action by Ecology's project coordinator, or an itemized billing statement under  
21 Section XIII of this Decree (Remedial Action Costs), the Parties shall utilize the dispute  
22 resolution procedure set forth below.

23 (A) Upon receipt of the Ecology project coordinator's written decision or the itemized  
24 billing statement, Clark County and/or the BCRRT LLC has fourteen (14) calendar days within  
25 which to notify Ecology's project coordinator, and the other Party's project coordinator, in  
26 writing of its objection to the decision.



1 (B) The Parties' project coordinators shall then confer in an effort to resolve the  
2 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) calendar days,  
3 Ecology's project coordinator shall issue a written decision.

4 (C) The objecting Party may then request section management review of the decision.  
5 This request shall be submitted in writing to the Land and Aquatic Cleanup Headquarters Section  
6 Manager (Section Manager) of the Toxics Cleanup Program within seven (7) calendar days of  
7 receipt of Ecology's project coordinator's decision.

8 (D) Ecology's Section Manager shall conduct a review of the dispute and shall  
9 endeavor to issue a written decision regarding the dispute within thirty (30) calendar days of the  
10 request for review.

11 (E) If the objecting Party finds Ecology's Section Manager's decision unacceptable,  
12 the objecting Party may then request final management review of the decision. This request shall  
13 be submitted in writing to the Toxics Cleanup Program Manager within seven (7) calendar days  
14 of receipt of the Section Manager's decision.

15 (F) Ecology's Program Manager shall conduct a review of the dispute and shall  
16 endeavor to issue a written decision regarding the dispute within thirty (30) calendar days of the  
17 request for review of the Section Manager's decision. The Program Manager's decision shall be  
18 Ecology's final decision on the disputed matter.

19 137. If Ecology's final written decision is unacceptable to Clark County or the BCRRT  
20 LLC, Clark County and/or the BCRRT LLC have the right to submit the dispute to the Court for  
21 resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as  
22 necessary, resolve any dispute arising under this Decree. In the event Clark County and/or the  
23 BCRRT LLC presents an issue to the Court for review, the Court shall review the action or  
24 decision of Ecology on the basis of whether such action or decision was arbitrary and capricious  
25 and render a decision based on such standard of review.  
26

138. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay, the other Party may seek sanctions.

139. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

## XVII. PERFORMANCE

140. All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent, with expertise and experience in hazardous waste site investigation and cleanup. The BCRRT LLC shall notify Ecology in writing of the identity of such engineer(s) or hydrogeologist(s), or their equivalents, and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Property.

141. Any construction work performed pursuant to this Decree shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

142. Any removal and/or disposal of MEC performed pursuant to this Decree shall be under the supervision of a Senior UXO supervisor (SUXOS) identified by the BCRRT LLC and approved by Ecology. The SUXOS must be an “explosives or munitions emergency response specialist” as defined in WAC 173-303-040. The BCRRT LLC shall notify Ecology as to the identity and qualifications of the SUXOS it has selected. The selection of the SUXOS is subject to Ecology approval, which shall not be unreasonably withheld. The BCRRT LLC shall provide a copy of this Decree to the SUXOS and shall require that all work undertaken by the SUXOS to remove and/or dispose of MEC will be in compliance with this Decree.

1                                   **XVIII. COMPLIANCE WITH APPLICABLE LAWS**

2           143. All actions carried out by Clark County and/or the BCRRT LLC pursuant to this  
3 Decree shall be done in accordance with all applicable federal, state, and local requirements,  
4 including requirements to obtain necessary permits and approvals, except as provided in RCW  
5 70.105D.090.

6           144. Pursuant to RCW 70.105D.090(1), Clark County and the BCRRT LLC are  
7 exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and  
8 90.58 RCW and of any laws requiring or authorizing local government permits or approvals.  
9 However, Clark County and the BCRRT LLC shall comply with the substantive requirements of  
10 such permits or approvals. A list of such permits and approvals and/or the substantive  
11 requirements of those permits and approvals as they are known to be applicable at the time of  
12 issuance of any RI/FS Report or CAP for any RAU shall be included in the respective RI/FS  
13 Report or CAP for that RAU and shall be binding and enforceable requirements of this Decree.

14           145. Clark County and the BCRRT LLC have a continuing obligation to determine  
15 whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be  
16 required for the remedial action under this Decree. In the event either Clark County, the BCRRT  
17 LLC, or Ecology determines that additional permits or approvals addressed in RCW  
18 70.105D.090(1) would otherwise be required for the remedial action under this Decree, it shall  
19 promptly notify the other Parties of this determination. Ecology shall determine whether  
20 Ecology, the BCRRT LLC, or Clark County shall be responsible to contact the appropriate state  
21 and/or local agencies. If Ecology so requires, Clark County and/or the BCRRT LLC shall  
22 promptly consult with the appropriate state and/or local agencies and provide Ecology with  
23 written documentation from those agencies of the substantive requirements those agencies  
24 believe are applicable to the remedial action. Ecology shall make the final determination on the  
25 additional substantive requirements that must be met by Clark County and/or the BCRRT LLC  
26 and on how Clark County and/or the BCRRT LLC must meet those requirements. Ecology shall

1 inform Clark County and the BCRRT LLC in writing of these requirements. Once established  
2 by Ecology, the additional requirements shall be enforceable requirements of this Decree. Clark  
3 County and/or the BCRRT LLC shall not begin or continue the remedial action potentially  
4 subject to the additional requirements until Ecology makes its final determination.

5 146. Ecology shall ensure that notice and opportunity for comment is provided to the  
6 public and appropriate agencies prior to establishing the substantive requirements under this  
7 Section.

8 147. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
9 exemption from complying with the procedural requirements of the laws referenced in RCW  
10 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for  
11 the State to administer any federal law, the exemption shall not apply and Clark County and/or  
12 the BCRRT LLC shall comply with both the procedural and substantive requirements of the laws  
13 referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

#### 14 **XIX. RESTRICTIVE COVENANTS**

15 148. Pursuant to Section X.C of this Decree, institutional controls are required at the  
16 Property under WAC 173-340-440(4) to limit access to the Property and ensure the continued  
17 protection of human health and safety during the remediation of the Property. Clark County  
18 shall record the Restrictive Covenant that describes those controls with the office of the Clark  
19 County Auditor within thirty (30) calendar days of the transfer of the Early Transfer Parcel from  
20 the Army to Clark County. Clark County shall provide Ecology with a copy of the recorded  
21 Restrictive Covenant within thirty (30) calendar days of the recording date.

22 149. If additional institutional controls are required at the Property and a Restrictive  
23 Covenant is established under this Decree that describes those controls, then the BCRRT LLC or  
24 Clark County, based on ownership at that time, shall record the Restrictive Covenant with the  
25 office of the Clark County Auditor in a timely manner. The Party that records the Restrictive  
26

1 Covenant shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty  
2 (30) calendar days of the recording date.

3 **XX. PUBLIC PARTICIPATION**

4 150. A public participation plan is required for this Property. The BCRRT LLC shall  
5 prepare and/or update the Public Participation Plan for the Property and submit a draft plan for  
6 Ecology review and approval within sixty (60) calendar days of the effective date of this Decree.  
7 The draft plan shall be subject to the review, comment, and approval process in Paragraph 116 of  
8 this Decree.

9 151. Ecology shall maintain the responsibility for public participation at the Property.  
10 However, Clark County and the BCRRT LLC shall cooperate with Ecology, and shall:

11 (A) If agreed to by Ecology, prepare drafts of public notices and fact sheets at  
12 important stages of the remedial action, such as the submission of work plans, remedial  
13 investigation/feasibility study reports, cleanup action plans, and engineering design reports. As  
14 appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute  
15 public notices of Ecology's presentations and meetings;

16 (B) Notify Ecology's project coordinator prior to the preparation of all press releases  
17 and fact sheets, and before major meetings with the interested public and local governments.  
18 Likewise, Ecology shall notify Clark County and the BCRRT LLC prior to the issuance of all  
19 press releases and fact sheets, and before major meetings with the interested public and local  
20 governments. For all press releases, fact sheets, meetings, and other outreach efforts by Clark  
21 County and/or the BCRRT LLC that do not receive prior Ecology approval, Clark County and/or  
22 the BCRRT LLC shall clearly indicate to its audience that the press release, fact sheet, meeting,  
23 or other outreach effort was not sponsored or endorsed by Ecology;

24 (C) Upon reasonable advance notice, participate in public presentations on the  
25 progress of the remedial action at the Property. Participation may be through attendance at  
26 public meetings to assist in answering questions, or as a presenter;

1 (D) In cooperation with Ecology, arrange and/or continue information repositories to  
2 be located at the following locations:

- 3 (1) Department of Ecology  
4 Toxics Cleanup Program  
5 300 Desmond Dr.  
6 Lacey, Washington  
7 By appt: (360) 407-7224  
8 www.wa.gov/ecology/tcp/cleanup.html  
9  
10 (2) Vancouver Mall Public Library  
11 8700 NE Vancouver Mall Dr.  
12 Suite 205  
13 Vancouver, Washington  
14 Attn: Barbara Meisenheimer  
15 Phone: (360) 892-8256

16 At a minimum, copies of all public notices, fact sheets, and press releases; quality assured  
17 monitoring data; remedial action plans and reports; supplemental remedial planning documents;  
18 and all other similar documents relating to performance of the remedial action required by this  
19 Decree shall be promptly placed in these repositories.

## 20 XXI. ACCESS

21 152. Ecology or any Ecology authorized representatives shall have full authority to  
22 enter and freely move about the Property at all reasonable times for the purposes of, *inter alia*:  
23 inspecting records, operation logs, and contracts related to the work being performed pursuant to  
24 this Decree; reviewing the BCRRT LLC's progress in carrying out the terms of this Decree;  
25 conducting such tests or collecting such samples as Ecology may deem necessary; using a  
26 camera, sound recording, or other documentary type equipment to record work done pursuant to  
this Decree; and verifying the data submitted to Ecology by Clark County and/or the BCRRT  
LLC. The BCRRT LLC shall make all reasonable efforts to secure access rights for those  
portions of the Property not owned or controlled by Clark County or the BCRRT LLC where  
remedial activities or investigations will be performed pursuant to this Decree. Ecology or any  
Ecology authorized representative shall give reasonable notice before entering any portion of the  
Property owned or controlled by Clark County or the BCRRT LLC unless an emergency

1 prevents such notice. Where access to the Property is restricted due to the presence of military  
2 munitions, with reasonable prior notice Clark County or the BCRRT LLC shall supply sufficient  
3 personnel trained in ordnance recognition and avoidance to enable Ecology or any Ecology  
4 authorized representative to carry out the purposes of this Paragraph. All Parties with access to  
5 the Property pursuant to this Paragraph shall comply with approved health and safety and  
6 Explosive Safety plans. Ecology employees and their representatives shall not be required to  
7 sign any liability release or waiver as a condition of Property access.

## 8 **XXII. SAMPLING AND DATA SUBMITTAL**

9 153. With respect to the implementation of this Decree, Clark County and/or the  
10 BCRRT LLC shall make the results of all reconnaissance, sampling, laboratory reports, and/or  
11 test results generated by them, or on their behalf, available to Ecology. Pursuant to WAC  
12 173-340-840(5), Clark County and/or the BCRRT LLC shall submit those results in accordance  
13 with Section XIV of this Decree and as follows:

14 (A) Within thirty (30) calendar days of the generation by Clark County and/or the  
15 BCRRT LLC, or on their behalf, of any field or laboratory data, including any validated and  
16 non-validated data, Clark County and/or the BCRRT LLC shall submit such data to Ecology.  
17 The data shall include a list of hazardous substances analyzed for, but not detected. In  
18 accordance with Ecology's Toxic Cleanup Program Policy 840 (Data Submittal Requirements),  
19 the data shall be submitted in both printed and electronic formats and the electronic format shall  
20 be compatible with Ecology's data management systems.

21 (B) If preliminary analysis of samples indicates a potential imminent and substantial  
22 endangerment to public health, then Clark County and/or the BCRRT LLC shall notify Ecology  
23 immediately.

24 154. If requested by Ecology, Clark County and/or the BCRRT LLC shall allow split  
25 or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples  
26 collected by Clark County and/or the BCRRT LLC pursuant to the implementation of this

1 Decree. Clark County and/or the BCRRT LLC shall notify Ecology seven (7) calendar days in  
2 advance of any sample collection or work activity at the Property. Ecology shall, upon request,  
3 allow split or duplicate samples to be taken by Clark County and/or the BCRRT LLC or its  
4 authorized representatives of any samples collected by Ecology pursuant to the implementation  
5 of this Decree provided it does not interfere with Ecology's sampling. Ecology shall provide the  
6 quality assured and quality controlled (QA/QC) results of any sampling conducted by Ecology to  
7 Clark County and the BCRRT LLC within fourteen (14) calendar days of receipt of same.  
8 Without limitation on Ecology's rights under Section XXI of this Decree, Ecology shall  
9 endeavor to notify Clark County and/or the BCRRT LLC prior to any sample collection activity  
10 unless an emergency prevents such notice.

11 155. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses  
12 shall be conducted by a laboratory accredited under chapter 173-50 WAC for the specific  
13 analyses to be conducted, unless otherwise approved by Ecology.

#### 14 **XXIII. REPORTING OF ADDITIONAL RELEASES**

15 156. In accordance with WAC 173-340-300, Clark County and/or the BCRRT LLC  
16 shall notify Ecology in writing of any discovery of any previously unidentified release, including  
17 any previously unidentified area of military munitions, within thirty (30) calendar days of the  
18 discovery. Any release discovered after the effective date of this Decree that requires remedial  
19 action may be addressed as part of an existing RAU or as a separate RAU by agreement of the  
20 Parties. Any such agreement will become an integral and enforceable part of this Decree upon  
21 entry by the Court as an amendment to this Decree.

#### 22 **XXIV. RETENTION AND SUBMITTAL OF RECORDS**

23 157. During the pendency of this Decree and for ten (10) years from the date this  
24 Decree is no longer in effect as provided in Section XXXIII of this Decree, Clark County and/or  
25 the BCRRT LLC shall preserve all records, reports, documents, and underlying data in its  
26 possession relevant to the implementation of this Decree and shall insert a similar record



1 retention requirement into all contracts with project contractors and subcontractors. Upon  
2 request of Ecology, Clark County and/or the BCRRT LLC shall make all records available to  
3 Ecology and allow access for review within a reasonable time.

4 158. In accordance with WAC 173-340-850, Clark County and/or the BCRRT LLC  
5 shall submit a copy of any requested records relevant to this Decree within thirty (30) calendar  
6 days after receipt of Ecology's written request.

#### 7 **XXV. ENDANGERMENT**

8 159. If, for any reason, Ecology determines that any activity being performed at the  
9 Property is creating or has the potential to create a danger to human health or the environment,  
10 Ecology may direct Clark County and/or the BCRRT LLC to cease such activities for such  
11 period of time as it deems necessary to abate the danger. Clark County and/or the BCRRT LLC  
12 shall immediately comply with such direction.

13 160. If, for any reason, Clark County and/or the BCRRT LLC determine that any  
14 activity being performed at the Property is creating or has the potential to create a danger to  
15 human health or the environment, they may cease such activities. Clark County and/or the  
16 BCRRT LLC shall notify Ecology's project coordinator as soon as possible, but no later than  
17 twenty-four (24) hours after making such determination or ceasing such activities. Upon  
18 Ecology's direction, Clark County and/or the BCRRT LLC shall provide Ecology with  
19 documentation of the basis for the determination or cessation of such activities. If Ecology  
20 disagrees with Clark County's and/or the BCRRT LLC's cessation of activities, it may direct  
21 them to resume such activities.

22 161. If Ecology concurs with or orders a work stoppage pursuant to this Section, Clark  
23 County's and/or the BCRRT LLC's obligations with respect to the ceased activities shall be  
24 suspended until Ecology determines the danger is abated, and the time for performance of such  
25 activities, as well as the time for any other work dependent upon such activities, shall be  
26

1 extended, in accordance with Section XI of this Decree, for such period of time as Ecology  
2 determines is reasonable under the circumstances.

3 162. Nothing in this Decree shall limit the authority of Ecology, its employees, agents,  
4 or contractors to take or require appropriate action in the event of an emergency.

#### 5 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

6 163. If Ecology determines that Clark County and/or the BCRRT LLC have failed  
7 without good cause to implement the remedial action, in whole or in part, then Ecology may,  
8 after providing notice to and an opportunity to respond by Clark County and/or the BCRRT  
9 LLC, perform any or all portions of the remedial action that remain incomplete. Ecology will  
10 consider Clark County's and/or the BCRRT LLC's response prior to performing any or all  
11 portions of the remedial action that remain incomplete. Clark County and/or the BCRRT LLC  
12 must respond within seven (7) calendar days of receipt of Ecology's notice. If Ecology performs  
13 all or portions of the remedial action because of Clark County's or the BCRRT LLC's failure to  
14 comply with its obligations under this Decree, Clark County and/or the BCRRT LLC shall  
15 reimburse Ecology for the costs of doing such work, provided that Clark County and/or the  
16 BCRRT LLC are not obligated under this Section to reimburse Ecology for costs incurred for  
17 work inconsistent with or beyond the scope of this Decree.

#### 18 **XXVII. TRANSFER OF INTEREST IN PROPERTY**

19 164. No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
20 interest in all or any portion of the Property shall be consummated without provision for  
21 continued operation and maintenance of any containment system, treatment system, and/or  
22 monitoring system installed or implemented pursuant to this Decree.

23 165. Prior to Clark County's and/or the BCRRT LLC's transfer of any interest in all or  
24 any portion of the Property, and during the effective period of this Decree, Clark County and/or  
25 the BCRRT LLC shall provide a copy of this Decree to any prospective purchaser, lessee,  
26 transferee, assignee, or other successor in said interest; and, at least thirty (30) calendar days

1 prior to any transfer, Clark County and/or the BCRRT LLC shall notify Ecology of said transfer.  
2 Upon transfer of any interest, Clark County and/or the BCRRT LLC shall restrict uses and  
3 activities to those consistent with this Decree and notify all transferees of the restrictions on the  
4 use of the property.

## 5 **XXVIII. COVENANT NOT TO SUE UNDER MTCA**

### 6 **A. Covenant Not to Sue**

7 166. In consideration of Clark County's and the BCRRT LLC's compliance with the  
8 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
9 actions against Clark County and/or the BCRRT LLC regarding the release or threatened release  
10 of hazardous substances covered by this Decree.

11 167. This Decree covers only the Site specifically identified in Section IV of this  
12 Decree and those hazardous substances that Ecology knows are located at the Site as of the date  
13 of entry of this Decree. This Decree does not cover any other hazardous substance or area.  
14 Ecology retains all of its authority relative to any substance, area or entity not covered by this  
15 Decree.

16 168. This Covenant Not to Sue shall have no applicability whatsoever to:

17 (A) Criminal liability;

18 (B) Liability for damages to natural resources; and

19 (C) Liability of potentially liable persons other than Clark County and the BCRRT  
20 LLC.

21 169. If factors not known to Ecology at the time of entry of the settlement agreement  
22 are discovered and present a previously unknown threat to human health or the environment, the  
23 Court shall amend this covenant not to sue.

### 24 **B. Reopeners**

25 170. Ecology specifically reserves the right to institute legal or administrative action  
26 against Clark County and/or the BCRRT LLC to require them to perform additional remedial

1 actions at the Property and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050,  
2 under the following circumstances:

3 (A) Upon Clark County's or the BCRRT LLC's failure to meet the requirements of  
4 this Decree, including, but not limited to, failure of the remedial action to meet the cleanup  
5 standards established pursuant to this Decree;

6 (B) Upon Ecology's determination that remedial action beyond the terms of this  
7 Decree is necessary to abate an imminent and substantial endangerment to human health and the  
8 environment;

9 (C) Upon the availability of new information regarding factors previously unknown  
10 to Ecology, including the nature or quantity of hazardous substances at the Property, and  
11 Ecology's determination, in light of this information, that further remedial action is necessary at  
12 the Property to protect human health or the environment; or

13 (D) Upon Ecology's determination, based on new information and prior to the  
14 issuance of a Notice of Completion for a RAU under Section XII of this Decree, that additional  
15 remedial actions are necessary at that RAU to achieve cleanup standards within the reasonable  
16 restoration time frame established pursuant to this Decree.

#### 17 **XXIX. CONTRIBUTION PROTECTION UNDER MTCA**

18 171. With regard to claims for contribution against Clark County and/or the BCRRT  
19 LLC, the Parties agree that Clark County and the BCRRT LLC are entitled to protection against  
20 claims for contribution for matters addressed in this Decree as provided by RCW  
21 70.105D.040(4)(d).

#### 22 **XXX. CLAIMS AGAINST THE STATE**

23 172. Clark County and the BCRRT LLC hereby agree that they have no claim of right  
24 to recover any costs accrued in implementing the remedial action required by this Decree from  
25 the State of Washington or any of its agencies; and further, that they have no claim of right  
26 against the State Toxics Control Account or any Local Toxics Control Account for any costs

1 incurred in implementing this Decree. Except as provided above, however, Clark County and  
2 the BCRRT LLC expressly reserve their right to seek to recover any costs incurred in  
3 implementing this Decree from any other potentially liable person.

#### 4 **XXXI. INDEMNIFICATION**

5 173. Clark County agrees to indemnify and save and hold the State of Washington, its  
6 employees, and agents harmless from any and all claims or causes of action for death or injuries  
7 to persons or for loss or damage to property arising from or on account of acts or omissions of  
8 Clark County, its officers, employees, agents, or contractors in entering into and implementing  
9 this Decree. The BCRRT LLC agrees to indemnify and save and hold the State of Washington,  
10 its employees, and agents harmless from any and all claims or causes of action for death or  
11 injuries to persons or for loss or damage to property arising from or on account of acts or  
12 omissions of the BCRRT LLC, its officers, employees, agents, or contractors in entering into and  
13 implementing this Decree. However, Clark County and the BCRRT LLC shall not indemnify  
14 the State of Washington nor save nor hold its employees and agents harmless from any claims or  
15 causes of action arising out of the negligent acts or omissions of the State of Washington, or the  
16 employees or agents of the State, in implementing the activities pursuant to this Decree.

#### 17 **XXXII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

18 174. This Decree has been the subject of public notice and comment under RCW  
19 70.105D.040(4)(a). As a result of this process, Ecology has determined that:

20 (A) This Decree will yield substantial new resources to facilitate cleanup;

21 (B) This Decree will expedite remedial action consistent with the rules adopted under  
22 MTCA; and

23 (C) Based on available information, the redevelopment or reuse of the Property is not  
24 likely to contribute to any existing or threatened release at the Site, interfere with any remedial  
25 action that may be needed at the Site, or increase health risks to persons at or in the vicinity of  
26 the Site.

1 175. If the Court withholds or withdraws its consent to this Decree, it shall be null and  
2 void at the option of any Party and the accompanying Complaint shall be dismissed without costs  
3 and without prejudice. In such an event, no Party shall be bound by the requirements of this  
4 Decree.

5 **XXXIII. DURATION OF THE DECREE AND RETENTION OF JURISDICTION**

6 176. The remedial program required pursuant to this Decree shall be maintained and  
7 continued until the BCRRT LLC and Clark County have received written notification from  
8 Ecology that the requirements of this Decree have been satisfactorily completed. This Decree  
9 shall remain in effect until dismissed by this Court. When dismissed, Section XXVIII, Covenant  
10 Not to Sue, and Section XXIX, Contribution Protection, shall survive.

11 177. This Decree shall remain in effect as to the BCRRT LLC until Ecology issues the  
12 Notice of Completion for the Property under Section XII of this Decree, the BCRRT LLC  
13 conveys the Early Transfer Parcel back to Clark County, and the BCRRT LLC is dismissed as a  
14 Party to this Decree with Prejudice. When the BCRRT LLC is dismissed as a Party, Section  
15 XXVIII, Covenant Not to Sue, and Section XXIX, Contribution Protection, shall survive.

16 **XXXIV. AMENDMENT OF THE DECREE**

17 178. This Decree may only be amended by a written stipulation among the Parties to  
18 this Decree that is entered by the Court or by order of the Court. Such amendment shall become  
19 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by  
20 any Party to the Decree.

21 179. Clark County and/or the BCRRT LLC shall submit any request for an amendment  
22 to Ecology for approval. Ecology shall indicate its approval or disapproval in a timely manner  
23 after the request for amendment is received. If the proposed amendment represents a substantial  
24 change, Ecology will provide public notice and opportunity for comment. Reasons for  
25 disapproval of a proposed amendment shall be stated in writing. If Ecology does not agree to a  
26

proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XVI of this Decree.

**XXXV. EFFECTIVE DATE OF THE DECREE**

180. This Decree is effective upon the date it is entered by the Court.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROB McKENNA  
Attorney General

\_\_\_\_\_  
JIM PENDOWSKI  
Program Manager  
Toxics Cleanup Program

\_\_\_\_\_  
MICHAEL L. DUNNING, WSBA #29452  
Assistant Attorney General

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CLARK COUNTY

\_\_\_\_\_  
MARC BOLDT, Chair  
Board of County Commissioners

\_\_\_\_\_  
BRONSON POTTER, WSBA #9102  
Attorney for Clark County

Date: \_\_\_\_\_

Date: \_\_\_\_\_

BONNEVILLE CONSERVATION,  
RESTORATION, AND RENEWAL  
TRUST LLC

\_\_\_\_\_  
MICHAEL GAGE, Managing Director  
The Property Renewal Group

Date: \_\_\_\_\_

ENTERED this \_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
JUDGE  
Clark County Superior Court